



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

September 20, 1995

4.3.6.4
RECEIVED

Reply To
Attn Of: SO-155

SEP 21 1995

Nancy Roberts
Union Pacific Railroad
1416 Dodge Street
Omaha, Nebraska 68179

SUPERFUND BRANCH

Bob Lawrence
Parcel, Mouro, Hultin & Spaanstra, PC
1801 California Street, Suite 3600
Denver, Colorado 80202

Marita Daly
Pillsbury Madison & Sutro
P.O. Box 7880
San Francisco, California 94120

Re: Bunker Hill Consent Decree

Dear Ms. Roberts, Mr. Lawrence and Ms. Daly:

Enclosed is a copy of the Order approving and entering the Consent Decree between the Environmental Protection Agency, the State of Idaho and your clients, Union Pacific Railroad Company, Stauffer Management Company and Rhone-Poulenc, Inc. relating to the Bunker Hill Superfund Site. Please note that this Order was entered on September 12, 1995 and that a number of obligations under the Consent Decree commence upon the date of entry of this Consent Decree.

Please telephone me at (206) 553-1777 if you have any questions.

Sincerely,


Cynthia L. Mackey
Assistant Regional Counsel

cc: Curt Fransen, Idaho

106534

USEPA SF



1071393

bcc: Sean Sheldrake, EPA Region 10
Earl Liverman, EPA Region 10
Howard Blood, EPA Region 10
Pete Mounsey, DOJ w/o enclosure

U.S. DISTRICT COURT
DISTRICT OF IDAHO
Filed at _____

SEP 12 1995

CLERK, U.S. DISTRICT COURT
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA and)	
STATE OF IDAHO,)	
)	
Plaintiffs,)	Case No. CV 95-0152-N-HLR
)	
vs.)	
)	ORDER
UNION PACIFIC RAILROAD COMPANY,)	
STAUFFER MANAGEMENT COMPANY, and)	
RHONE-POULENC, INC.,)	
)	
Defendants.)	

On March 24, 1995, a Notice of Lodging Consent Decree (Dkt. #2) was filed with the court and the proposed consent decree was lodged with the court. The requisite commentary period has passed and the limited comments have been addressed by the parties. On July 28, 1995, the United States of America and the State of Idaho moved for the court to enter the consent decree which was lodged with the court. No objection to the motion was filed by any party to the lawsuit and, in accordance with Section XXXIII of the consent decree, the defendants have waived further notice of the decree.

The court has reviewed the consent decree and the memorandum in support of the motion to enter the consent decree. The court finds that the limited comments of third parties have been adequately addressed by the consent decree; that the settlement terms of the consent decree are "fair, adequate, and reasonable"; and that the consent decree furthers the policies of CERCLA. See, Walsh v. Great Atlantic & Pacific Tea Co., Inc., 726 F.2d 956, 965 (3rd Cir. 1983).

Being fully advised in the premises, IT IS HEREBY ORDERED that the consent decree lodged on March 24, 1995, is hereby approved and entered as a judgment of this court, and the court clerk is directed to file the consent decree in the record and mail a copy of this order as well as the first page (with the file stamp verification) and page 100 (with the court's signature) of the consent decree to each party. The entire executed consent decree (106 pages) will be available to the parties upon written request to the clerk of the court and a payment of \$15.00 (for copying and postage).

Dated this 12th day of September, 1995.


EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

U.S. COURTS

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CAMERON S. BURKE
CLERK. IDAHO

U.S. DISTRICT COURT
DISTRICT OF IDAHO

Filed at

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SEP 12 1995

CLERK, U.S. DISTRICT COURT

By Deputy

UNITED STATES OF AMERICA and
STATE OF IDAHO

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY;
STAUFFER MANAGEMENT COMPANY;
RHONE-POULENC, INC.

Defendants.

CIV 95-0152-N-HLR

CIVIL ACTION NO.

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

1 B. The United States in its complaint seeks,
2 inter alia: (1) reimbursement of certain costs incurred and to be
3 incurred by EPA and the Department of Justice for response
4 actions in connection with the Bunker Hill Superfund Site
5 ("Site") in Shoshone County, Idaho, together with accrued
6 interest; and (2) performance of studies and response work by the
7 Defendants at the Site consistent with the National Oil and
8 Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part
9 300 (as amended) ("NCP").

10 C. In accordance with the NCP and Section 121(f)(1)(F)
11 of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA formally notified the
12 State on November 3, 1992, of negotiations with potentially
13 responsible parties regarding the implementation of the remedial
14 design and remedial action for the Site, and EPA has provided the
15 State with an opportunity to participate in such negotiations and
16 be a party to this Consent Decree.

17 D. The State of Idaho ("State") has joined the
18 complaint against the Defendants pursuant to Section 107 of
19 CERCLA, 42 U.S.C. § 9607, and relevant state law.

20 E. EPA formally notified the United States Department
21 of the Interior, the United States Forest Service, and the
22 Coeur d'Alene Tribe on November 3, 1992, of negotiations with
23 potentially responsible parties regarding the release of
24 hazardous substances that may have resulted in injury to natural
25 resources that are or may be under their trusteeship. However,
26

1 the notification letter further stated that natural resource
2 damages would not be a subject of negotiations.

3 F. The Defendants that have entered into this Consent
4 Decree do not admit any liability to the Plaintiffs arising out
5 of the transactions or occurrences, including releases, alleged
6 in the complaint.

7 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
8 EPA placed the Bunker Hill facility on the National Priorities
9 List, set forth at 40 C.F.R. Part 300, Appendix B, by publication
10 in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

11 H. The Site has been damaged by over 100 years of
12 mining and 65 years of smelting activity, as well as a variety of
13 other natural and man-made events. Heavy metals have been
14 released into soils, surface water and groundwater throughout the
15 Site to varying degrees through a combination of occurrences
16 including airborne particulate dispersion, alluvial deposition of
17 tailings through various mechanisms, including the flooding of
18 the extensive floodplain area within the Site, and other
19 contaminant movement from both on-Site and off-Site sources.

20 I. For the purposes of conducting the Remedial
21 Investigation and Feasibility Study ("RI/FS"), the Site has been
22 divided into Populated Areas and Non-Populated Areas. A separate
23 RI/FS and Record of Decision was performed for each of these
24 identified areas.

1 J. In April 1991, EPA and the State completed the
2 Populated Areas RI/FS. Pursuant to Section 117 of CERCLA,
3 42 U.S.C. § 9617, EPA published notice of the completion of the
4 FS and of the proposed plan for the Residential Soil Operable
5 Unit remedial action on April 26-30, 1991, in the Shoshone News
6 Press, a major local newspaper of general circulation. EPA
7 provided an opportunity for written and oral comments from the
8 public on the proposed plan for remedial action. A public
9 hearing was held on May 23, 1991, to answer questions and take
10 comments. A copy of the transcript of the public meeting is
11 available to the public as part of the administrative record upon
12 which the Regional Administrator based the selection of the
13 response action.

14 K. The decision by EPA on the remedial action to be
15 implemented for the Residential Soil Operable Unit of the Site is
16 embodied in a final Record of Decision (the "1991 ROD") which was
17 executed on August 30, 1991, by EPA and the State. The 1991 ROD
18 includes a responsiveness summary to the public comments. Notice
19 of the final plan was published in accordance with Section 117(b)
20 of CERCLA, 42 U.S.C. § 9617(b).

21 L. In June 1992, EPA and some of the PRPs completed the
22 Non-Populated Areas RI/FS. According to UP and the Stauffer
23 Entities, they participated in the Non-Populated Areas RI/FS.
24 Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
25 published notice of the completion of the FS and of the proposed
26

1 plan for remedial action on June 13, 1992, in the Shoshone News
2 Press and the Spokesman-Review, major local newspapers of general
3 circulation. EPA provided an opportunity for written and oral
4 comments from the public on the proposed plan for remedial
5 action. A public meeting was held on June 25, 1992, to answer
6 questions and take comments. A copy of the transcript of the
7 public meeting is available to the public as part of the
8 administrative record upon which the Regional Administrator based
9 the selection of the response action.

10 M. The decision by EPA on the remedial action to be
11 implemented for the Non-Populated areas and the remaining
12 populated areas of the Site is embodied in a ROD (the "1992
13 ROD"), executed on September 22, 1992, by EPA and the State of
14 Idaho. The 1992 ROD includes a responsiveness summary to the
15 public comments. Notice of the final plan was published in
16 accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

17 N. Throughout the years, a number of removal actions
18 have been conducted at this Site.

19 O. The Panhandle Health District (PHD) has agreed to
20 seek to adopt and implement an environmental health code which
21 will provide the basic regulatory framework for implementation of
22 an Institutional Control Program (ICP). PHD agrees to work with
23 the local governments within the Site to incorporate enabling
24 language into their planning and zoning ordinances that will
25 complement the environmental health code and aid in the
26

1 implementation of the ICP. If a local government is unable or
2 does not adopt the necessary enabling provisions, PHD will seek
3 to implement the ICP through its own authorities. The existence
4 of the ICP, as well as the existence of the provisions for the
5 ICP's enforcement, through either the PHD's environmental health
6 code or the planning and zoning ordinances of local governments
7 within the Site, are an acceptable and integral component of
8 remedial actions for the 1991 ROD and 1992 ROD.

9 P. This Consent Decree addresses certain enumerated
10 liabilities of the Settling Defendants at the Site. Pursuant to
11 this Consent Decree, the Settling Defendants are performing
12 specified Work. Settling Defendants are making specified
13 payments to the Plaintiffs for the ICP. The Stauffer Entities
14 are making a specified payment for the Phosphoric Acid/Fertilizer
15 Plant subarea. The Stauffer Entities are paying a premium to
16 address any past costs at the Site and any liability which the
17 Stauffer Entities may have for the non-NIPC areas of the Site.
18 Union Pacific is paying a premium to address any past costs at
19 the Site and any liability that Union Pacific may have for non-
20 Union Pacific areas at the Site. Pursuant to this Consent
21 Decree, the Settling Defendants are receiving the covenants not
22 to sue provided in Section XXII of this Consent Decree and the
23 contribution protection provided in Section XXIV of this Consent
24 Decree.

1 Q. Based on the information presently available to EPA,
2 EPA believes that the Work will be properly and promptly
3 conducted by the Settling Defendants if conducted in accordance
4 with the requirements of this Consent Decree and its attachments.

5 R. Solely for the purposes of Section 113(j) of CERCLA,
6 42 U.S.C. § 9613(j), the Remedial Action and the Work to be
7 performed by the Settling Defendants shall constitute a response
8 action taken or ordered by the President.

9 S. Except as otherwise provided in this Consent Decree,
10 in signing this Decree the Settling Defendants deny any and all
11 legal and equitable liability and reserve all defenses under any
12 federal, state, local or tribal statute, regulation, or common
13 law for any claim, endangerment, nuisance, response, removal,
14 remedial or other costs or damages incurred or to be incurred by
15 the United States, the State, or other entities or persons or any
16 natural resource damages as a result of the release or threat of
17 release of hazardous substances to, at, from or near the Site.
18 Pursuant to 42 U.S.C. § 9622(d)(1)(B), entry of this Consent
19 Decree is not an acknowledgment by Settling Defendants that any
20 release or threatened release of a hazardous substance
21 constituting an imminent and substantial endangerment to human
22 health or the environment has occurred or exists at the Site.
23 Settling Defendants do not admit and retain the right to
24 controvert any of the factual or legal statements or
25 determinations made herein in any judicial or administrative
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1 proceeding except in an action to enforce this Consent Decree or
2 as provided in Paragraph 100. Settling Defendants do agree,
3 however, to the Court's jurisdiction over this matter. This
4 Consent Decree shall not be admissible in any judicial or
5 administrative proceeding against any Settling Defendant, over
6 its objection, as proof of liability or an admission of any fact
7 dealt with herein, but it shall be admissible in an action to
8 enforce this Consent Decree. This Consent Decree shall not be
9 admissible in any judicial or administrative proceeding brought
10 by or on behalf of any Natural Resource Trustee for natural
11 resource damages, or in any judicial or administrative proceeding
12 brought against any Natural Resource Trustee, over the objection
13 of any Natural Resource Trustee, as proof of or a defense to
14 liability or as an admission of any fact dealt with herein.

15 T. The Parties recognize, and the Court by entering
16 this Consent Decree finds, that this Consent Decree has been
17 negotiated by the Parties in good faith and implementation of
18 this Consent Decree will expedite the cleanup of the Site and
19 will avoid prolonged and complicated litigation between the
20 Parties, and that this Consent Decree is fair, reasonable, and in
21 the public interest.

22 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:
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2. Notwithstanding any provision of this Consent Decree, nothing in this Consent Decree shall be construed to create any obligation on or right of action against the United States or the State for the performance of any response actions.

BUNKER HILL STAUFFER/UNION PACIFIC RAILROAD
CONSENT DECREE - Page 10

December 15, 1994

1 4. The Settling Defendants shall provide a copy of this
2 Consent Decree to each contractor hired by them, respectively, to
3 perform the Work (as defined below) required by this Consent
4 Decree and to each person representing the Settling Defendants
5 with respect to the Site or the Work and shall condition all
6 contracts entered into hereunder upon performance of the Work in
7 conformity with the terms of this Consent Decree. Settling
8 Defendants or their respective contractors shall provide written
9 notice of the Consent Decree to all subcontractors hired to
10 perform any portion of the Work required by this Consent Decree.
11 Settling Defendants shall nonetheless be responsible for ensuring
12 that their respective contractors and subcontractors perform the
13 Work contemplated herein in accordance with this Consent Decree.
14 With regard to the activities undertaken pursuant to this Consent
15 Decree, each contractor and subcontractor shall be deemed to be
16 in a contractual relationship with the Settling Defendants within
17 the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
18 § 9607(b)(3).

20 IV. DEFINITIONS

21 5. Unless otherwise expressly provided herein, terms
22 used in this Consent Decree which are defined in CERCLA or in
23 regulations promulgated under CERCLA shall have the meaning
24 assigned to them in CERCLA or in such regulations. Whenever
25 terms listed below are used in this Consent Decree or in the
26

1 attachments attached hereto and incorporated hereunder, the
2 following definitions shall apply:

3 A. "Administrative Record" means all documents,
4 including any attachments, enclosures, or other supporting
5 materials thereto, compiled, indexed by EPA or the State of Idaho
6 and maintained by EPA as the Administrative Records in support of
7 the 1991 ROD or the 1992 ROD;

8 B. "CERCLA" means the Comprehensive Environmental
9 Response, Compensation, and Liability Act of 1980, as amended,
10 42 U.S.C. §§ 9601, et seq;

11 C. "Consent Decree" shall mean this Decree and all
12 attachments hereto which are listed in Section XXX (Attachments).
13 In the event of conflict between this Decree and any Attachment,
14 this Decree shall control;

15 D. "Contractor" or "subcontractor" means the company or
16 companies retained by or on behalf of the Settling Defendants to
17 undertake and accomplish the Work and associated activities
18 required by this Consent Decree;

19 E. "Day" means a calendar day unless expressly stated
20 to be a working day. "Working day" shall mean a day other than a
21 Saturday, Sunday, or State or Federal holiday. In computing any
22 period of time under this Consent Decree, where the last day
23 would fall on a Saturday, Sunday, or State or Federal holiday,
24 the period shall run until the close of business of the next
25 working day;

1 F. "EPA" means the United States Environmental
2 Protection Agency and any successor departments or agencies;

3 G. "Future Response Costs" shall mean all costs,
4 including, but not limited to, direct and indirect costs, that
5 the United States and the State incur on or after the lodging of
6 this Consent Decree in reviewing or developing plans, reports,
7 and other items pursuant to this Consent Decree, verifying the
8 Work, or otherwise implementing, overseeing, or enforcing this
9 Consent Decree, including, but not limited to, payroll costs,
10 contractor costs, travel costs, laboratory costs, the costs
11 incurred pursuant to Section VII (Additional Response Actions),
12 Section VIII (Periodic Review), Section X (Access) (including,
13 but not limited to, attorneys fees and the amount of just
14 compensation), Section XVI (Emergency Response Costs), and
15 Paragraph 92 of Section XXII (Covenants Not To Sue by
16 Plaintiffs). Future Response Costs shall also include all costs,
17 including direct and indirect costs, paid by the United States
18 and the State in connection with the Consent Decree between the
19 date of lodging of this Consent Decree and the effective date of
20 the Consent Decree;

21 H. "ICP" means the Institutional Control Program which
22 provides a regulatory framework to ensure that activities
23 involving excavations, building, development, construction and
24 renovation and grading within the Bunker Hill Superfund Site
25 provide for the installation and maintenance of Barriers and
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1 implementation of other contaminant management standards to
2 preclude the migration of, and particularly, human exposure to
3 contaminants within the Site as necessary to protect the public
4 health and environment;

5 I. "National Contingency Plan" or "NCP" means the
6 National Oil and Hazardous Substances Pollution Contingency Plan
7 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
8 codified at 40 C.F.R. Part 300, including, but not limited to,
9 any amendments thereto;

10 J. "NIPC Area" means the North Idaho Phosphate Company
11 Area delineated in the map attached as Attachment C which
12 includes the Phosphoric Acid/Fertilizer Plant subarea and the A-4
13 Gypsum subarea encompassing portions of Magnet Gulch. Within
14 this Area the "Phosphoric Acid/Fertilizer Plant" subarea or "PAFP
15 subarea" shall mean the subarea designated as such and delineated
16 in the map attached as Attachment C. Also within this Area, the
17 "A-4 Gypsum subarea" shall mean the subarea designated as such
18 and delineated in the map attached as Attachment C;

19 K. "Operation and Maintenance" or "O & M" means all
20 activities required by the Statement of Work ("SOW") to maintain
21 the effectiveness of the Remedial Action;

22 L. "Paragraph" means a portion of this Consent Decree
23 identified by an Arabic numeral or an upper case letter;

24 M. "Parties" means the United States, the State of
25 Idaho, and the Settling Defendants;

1 N. "Past Response Costs" shall mean all costs,
2 including, but not limited to, direct and indirect costs and
3 interest, that the United States and the State incurred and paid
4 with regard to the Site prior to lodging of the Consent Decree;

5 O. "Performance Standards" means those cleanup
6 standards, standards of control, and other substantive
7 requirements, criteria, or limitations set forth in the RODs, as
8 clarified by the respective SOWs, except that "To Be Considered"
9 criteria referenced in the RODs shall only be deemed Performance
10 Standards if so specified in a SOW;

11 P. "Phosphoric Acid/Fertilizer Plant Remedial Action"
12 or "PAFP Remedial Action" means the remedial design and remedial
13 action that the Governments will undertake for the PAFP subarea.

14 Q. "Plaintiffs" means the United States and the State
15 of Idaho;

16 R. "RCRA" means the Solid Waste Disposal Act, as
17 amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource
18 Conservation and Recovery Act);

19 S. "Record(s) of Decision" or "ROD(s)" means both the
20 1991 ROD and the 1992 ROD, relating to the Site, and all
21 attachments thereto. These RODs are attached hereto as
22 Attachment A and incorporated herein by reference;

23 T. "Remedial Action" means those activities, except for
24 O & M, to be undertaken separately by the Settling Defendants to
25 implement the final plans and specifications submitted separately
26

1 by the Settling Defendants pursuant to the Scope of Work and Work
2 Plans approved by EPA for their Respective Areas;

3 U. "Remedial Design Report" (or "RDR") means the
4 document submitted by the Stauffer Entities to implement the
5 Work in the A-4 Gypsum subarea required under this Consent
6 Decree. The draft Stauffer Entities RDR is attached hereto as
7 Attachment G;

8 V. "Remedial Action Work Plans" or "RAWP" means the
9 documents submitted separately by the Settling Defendants
10 pursuant to this Consent Decree and described more fully in the
11 SOW;

12 W. "Respective Areas" means with respect to Union
13 Pacific, the "Union Pacific Area" and with respect to the
14 Stauffer Entities, the "NIPC Area";

15 X. "Rhone-Poulenc, Inc." means the New York corporation
16 of said name, which is the successor in interest by merger to
17 Stauffer Chemical Company;

18 Y. "Section" means a portion of this Consent Decree
19 identified by a Roman numeral;

20 Z. "Settling Defendants" means each company, the
21 Stauffer Entities (Stauffer Management Company and Rhone-Poulenc,
22 Inc.) and Union Pacific, separately, so that each applicable
23 provision applies separately (not jointly) to Union Pacific or
24 the Stauffer Entities;

1 AA. The "Bunker Hill Superfund Site" or "Site" means an
2 approximately twenty-one (21) square mile area in Shoshone
3 County, Idaho, running approximately seven (7) miles in the
4 east-west direction and approximately three (3) miles in the
5 north-south direction as more accurately delineated on Attachment
6 B, the Bunker Hill Superfund Site Allocation Map, excluding any
7 hazardous substances in the South Fork of the Coeur d'Alene River
8 which flow into the Site;

9 BB. "State" means the State of Idaho;

10 CC. "Statement of Work" or "SOW" means the documents
11 setting forth the Work to be performed by each Settling Defendant
12 for its Respective Area, as set forth in Attachments E and F to
13 this Consent Decree, and any modifications made in accordance
14 with this Consent Decree;

15 DD. "Stauffer Management Company" means the Delaware
16 corporation of said name, which is the indemnitor of certain
17 environmental liabilities of Stauffer Chemical Company, including
18 liabilities of Stauffer Chemical Company that relate to the Site;

19 EE. "Stauffer Entities" means Stauffer Management
20 Company and Rhone-Poulenc, Inc.;

21 FF. "Supervising Contractors" means the Settling
22 Defendants or the principal contractors retained by the Settling
23 Defendants to supervise and direct the implementation of the Work
24 under this Consent Decree;

1 GG. "Union Pacific Railroad Company" or "Union Pacific"
2 means the Utah Corporation of that name;

3 HH. "Union Pacific Area" means the area delineated as
4 such on the map attached as Attachment D, including, but not
5 limited to, the railroad Right-Of-Way;

6 II. "United States" means the United States of America;

7 JJ. "Waste Material" shall mean (1) any "hazardous
8 substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);
9 (2) any pollutant or contaminant under Section 101(33) of CERCLA,
10 42 U.S.C. § 9601(33); (3) any "solid waste" under Section
11 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
12 waste" under Idaho Code § 39-4403(8); and

13 KK. The "Work" shall mean all activities Settling
14 Defendants are required to perform separately under this Consent
15 Decree for their Respective Areas, except those required by
16 Section XXVI (Retention of Records).

17
18 V. GENERAL PROVISIONS

19 6. Objectives of the Parties

20 The objectives of the Parties in entering into this
21 Consent Decree are to protect public health or welfare or the
22 environment at the Site by the design and implementation of
23 response actions at the Site by the Settling Defendants and to
24 reimburse response costs of the Plaintiffs. By entering into
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1 this Consent Decree, the Parties also intend to resolve claims
2 and liabilities as set forth in this Consent Decree.

3 7. Approval of SOWs

4 The United States and the State have reviewed and
5 approved the SOWs attached hereto, and have found them consistent
6 with the RODs, the NCP, and the requirements of relevant EPA
7 remedial design guidance documents. The United States and State
8 have reviewed the draft RDR, specified in the SOW, which
9 establishes the conceptual design for the development of the
10 final draft RDR. Union Pacific has submitted a draft RAWP which
11 is attached hereto and which will be reviewed and finalized in
12 accordance with the Consent Decree.

13 8. Commitments by the Stauffer Entities

14 a. The Stauffer Entities shall finance and perform the
15 Work as it relates to the NIPC Area in accordance with this
16 Consent Decree and all plans, standards, specifications, and
17 schedules set forth in or developed and approved by EPA pursuant
18 to this Consent Decree. The Stauffer Entities shall also
19 reimburse the United States and the State for Future Response
20 Costs as provided in and limited by this Consent Decree.

21 b. The Stauffer Entities shall finance and perform the
22 activities required by the RODs as set forth in the relevant SOW
23 (Attachment E) and the RDR (Attachment G) for the A-4 Gypsum
24 subarea. This includes Remedial Design and Remedial Action for
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1 the A-4 Gypsum subarea and long-term Operation and Maintenance
2 for the A-4 Gypsum subarea.

3 c. Within sixty (60) days of entry of this Consent
4 Decree, the Stauffer Entities shall pay one hundred fifty
5 thousand dollars (\$ 150,000) to finance their portion of an
6 Institutional Controls Program for the Site. This payment shall
7 be paid to the State of Idaho which will place this money in a
8 trust fund for use in implementing aspects of the Institutional
9 Controls Program. This payment shall constitute full
10 satisfaction of the Stauffer Entities' obligations for the ICP.

11 d. Within thirty (30) days of entry of this Consent
12 Decree, the Stauffer Entities shall pay a premium of five hundred
13 thousand dollars (\$ 500,000) to EPA, and five hundred thousand
14 dollars (\$ 500,000) to the State of Idaho. The Plaintiffs shall
15 utilize the premium for remedial action and operation and
16 maintenance activities within the Site. The provision of such
17 remedial action shall not require the assurances of Section
18 104(c)(3) of CERCLA, 42 U.S.C. § 9604(c)(3).

19 e. Within thirty (30) days of entry of this Consent
20 Decree, the Stauffer Entities shall pay EPA eight hundred and
21 fifty thousand dollars (\$ 850,000) to finance the Remedial Design
22 and Remedial Action, and any Operation and Maintenance for the
23 Phosphoric Acid/Fertilizer Plant. The Governments will perform
24 the PAFP Remedial Action in a manner fully consistent with RODs.
25 Within a reasonable time after the completion of the PAFP

1 Remedial Action, EPA will provide notice to the Stauffer Entities
2 that the remediation is completed.

3 f. The obligations of the Stauffer Entities to finance
4 and perform their obligations and to pay amounts owed the United
5 States and the State under this Consent Decree are solely the
6 obligations of the Stauffer Entities and are not joint or several
7 obligations of Union Pacific.

8 9. Commitments by Union Pacific

9 a. Union Pacific shall finance and perform the Work as
10 it relates to the Union Pacific Area in accordance with this
11 Consent Decree and all plans, standards, specifications, and
12 schedules set forth in or developed and approved by EPA pursuant
13 to this Consent Decree. Union Pacific shall also reimburse the
14 United States and the State for Future Response Costs as provided
15 in this Consent Decree.

16 b. Union Pacific shall finance and perform the
17 activities required by the RODs as set forth in the Union Pacific
18 Statement of Work and the Union Pacific RAWP for the Union
19 Pacific Area. Union Pacific's obligations include the Remedial
20 Design and the Remedial Action for the Union Pacific Right-Of-Way
21 and the long term Operation and Maintenance of the Right-Of-Way.
22 Union Pacific will have access to a repository at the Site for
23 disposal of Waste Materials, including treated Waste Materials,
24 from the Union Pacific Area prior to certification of completion
25 of the Remedial Action at no cost to Union Pacific, except that
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Union Pacific will be responsible for costs associated with treatment of Waste Materials exceeding principal threat levels. After certification of completion of the Remedial Action, Union Pacific shall provide for disposal of Waste Materials from the Union Pacific Area at its own cost.

c. Within sixty (60) days of entry of this Consent Decree, Union Pacific shall pay one hundred fifty thousand dollars (\$ 150,000) to finance its portion of an Institutional Controls Program for the Site. This payment shall be paid to the State of Idaho which will place this money in a trust fund for use in implementing aspects of the Institutional Controls Program. This payment shall constitute full satisfaction of Union Pacific's obligations for the ICP.

d. Within thirty (30) days of entry of this Consent Decree, Union Pacific shall pay a premium of four hundred twenty-five thousand dollars (\$ 425,000) to EPA and four hundred twenty-five thousand dollars (\$ 425,000) to the State of Idaho. The Plaintiffs shall utilize the premium for remedial action and operation and maintenance activities within the Site. The provision of such remedial action shall not require the assurances of Section 104(c)(3) of CERCLA, 42 U.S.C. § 9604(c)(3).

e. The obligations of Union Pacific to finance and perform its obligations and to pay amounts owed the United States and the State under this Consent Decree are solely the

1 obligations of Union Pacific and are not joint or several
2 obligations of the Stauffer Entities.

3 10. Termination of Administrative Orders

4 Upon entry of this Consent Decree, any and all
5 Administrative Orders relating to the Site existing prior to the
6 date of lodging, including the following Administrative Orders,
7 shall be deemed satisfied and withdrawn as to the Settling
8 Defendants: Administrative Order and Settlement Agreement for
9 1990 Residential Removal Action at the Bunker Hill Superfund
10 Site, EPA Docket No. 1090-05-35-106; Bunker Hill Superfund Site
11 Administrative Order on Consent: Hillsides Revegetation/
12 Stabilization and Removal Action, EPA Docket No. 1090-10-01-106;
13 Administrative Order on Consent for 1991 Removal Action at the
14 Bunker Hill Superfund Site, EPA Docket No. 1091-06-17-106(A);
15 Administrative Order on Consent for 1992 Removal Action at the
16 Bunker Hill Superfund Site, EPA Docket No. 1092-04-14-106; and
17 Unilateral Administrative Order for Portion of the Bunker Hill
18 Residential Soils Remedial Design and Remedial Action
19 No. 1093-08-14-106 (August 24, 1993).

20 11. Compliance With Applicable Law

21 All activities undertaken by Settling Defendants pursuant
22 to this Consent Decree shall be performed in accordance with the
23 requirements of all applicable Federal and State laws and
24 regulations. Settling Defendants must also comply with all
25 applicable or relevant and appropriate requirements of all
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1 Federal and State environmental laws as set forth in the RODs as
2 clarified by the respective SOWs, except that "To Be Considered"
3 criteria referenced in the RODs shall only be considered
4 applicable or relevant and appropriate requirements if so
5 specified in an SOW. The activities conducted pursuant to this
6 Consent Decree, if approved by EPA, shall be considered to be
7 consistent with the NCP.

8 12. Permits

9 a. As provided in Section 121(e) of CERCLA,
10 42 U.S.C. § 9621(e), and § 300.5 of the NCP, no permit shall be
11 required for any portion of the Work conducted entirely on-Site.
12 Where any portion of the Work requires a federal or state permit
13 or approval, Settling Defendants shall submit timely and complete
14 applications and take all other actions necessary to obtain all
15 such permits or approvals.

16 b. The Settling Defendants may seek relief under the
17 provisions of Section XIX (Force Majeure) of this Consent Decree
18 for any delay in the performance of the Work resulting from a
19 failure to obtain, or a delay in obtaining, any permit required
20 for the Work.

21 c. This Consent Decree is not, and shall not be
22 construed to be, a permit issued pursuant to any federal or state
23 statute or regulation, nor shall any releases at or from the Site
24 subsequent to entry of this Consent Decree constitute federally
25 permitted releases unless such releases are made in compliance
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1 with a federal or state permit specifically authorizing such
2 releases.

3 13. Notice of Obligations to Successors-in-Title

4 a. Within thirty (30) days after entry of this Consent
5 Decree, any Settling Defendant who owns property within the Site
6 shall record a certified copy of this Consent Decree with the
7 Recorder's Office in Shoshone County, State of Idaho.

8 Alternatively, within thirty (30) days after entry of this
9 Consent Decree, any Settling Defendant who owns property within
10 the Site shall submit for EPA approval under Section XII
11 (Submissions Requiring Agency Approval), a listing of the county
12 assessor's parcel number for the property owned by such Settling
13 Defendant within the Site and a summary of the terms of this
14 Consent Decree. This summary shall include a description of
15 where the full Consent Decree can be found. Upon approval of its
16 summary, the Settling Defendant shall have fifteen (15) days to
17 submit for recording by the appropriate recorder's office in
18 Shoshone County, State of Idaho, the summary of the terms of this
19 Consent Decree as approved by EPA.

20 b. Thereafter, each deed, title, or other instrument
21 conveying an interest in the property of such Settling Defendants
22 included in the Site shall contain a notice stating that the
23 property is subject to this Consent Decree and any lien retained
24 by the United States, and shall reference the recorded location
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1 of the Consent Decree and any restrictions applicable to the
2 property under this Consent Decree.

3 c. The obligations of each Settling Defendant with
4 respect to the provision of access under Section X (Access) and
5 the implementation of any applicable institutional controls shall
6 be binding upon such Settling Defendants and any and all persons
7 who subsequently acquire any such interest or portion thereof
8 (hereinafter "Successors-in-Title"). Within thirty (30) days
9 after the entry of this Consent Decree, each Settling Defendant
10 who owns property within the Site shall record at the appropriate
11 Recorder's Office a notice of obligation to provide access under
12 Section X (Access) and related covenants. Each subsequent
13 instrument conveying an interest to any such property included in
14 the Site shall reference the recorded location of such notice and
15 covenants applicable to the property.

16 d. Any Settling Defendant and any Successor-in-Title
17 shall, at least thirty (30) days prior to the conveyance of any
18 such interest, give written notice of this Consent Decree to the
19 grantee and written notice to EPA and the State of the proposed
20 conveyance, including the name and address of the grantee, and
21 the date on which notice of the Consent Decree was given to the
22 grantee. In the event of any such conveyance, the Settling
23 Defendants' obligations under this Consent Decree, including
24 their obligations to provide or secure access pursuant to Section
25 X (Access), shall continue to be met by the Settling Defendants.

1 In addition, if the United States and the State approve, the
2 grantee may perform some or all of the Work under this Consent
3 Decree; provided, however, the grantee may, upon notice by the
4 Settling Defendants to the United States and State, perform the
5 Operation and Maintenance without prior approval by the United
6 States and the State. In no event shall the conveyance of an
7 interest in property that includes, or is a portion of, the Site
8 release or otherwise affect the liability of the Settling
9 Defendants to comply with the Consent Decree.

10
11 VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

12 14. Selection of Supervising Contractor.

13 a. All aspects of the Work to be performed by Settling
14 Defendants pursuant to Sections VI (Performance of the Work by
15 Settling Defendants), VII (Additional Response Actions), VIII
16 (EPA Periodic Review), and IX (Quality Assurance, Sampling and
17 Data Analysis) of this Consent Decree shall be under the
18 direction and supervision of the Supervising Contractor, the
19 selection of which shall be subject to disapproval by EPA after a
20 reasonable opportunity for review and comment by the State.
21 Within thirty (30) days after the lodging of this Consent Decree,
22 Settling Defendants shall notify EPA and the State, in writing,
23 of the name, title, and qualifications of any contractor proposed
24 to be a Supervising Contractor. EPA will issue a notice of
25 disapproval or an authorization to proceed. If at any time
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1 thereafter Settling Defendants propose to change a Supervising
2 Contractor, Settling Defendants shall give such notice to EPA and
3 the State and must obtain an authorization to proceed from EPA,
4 after a reasonable opportunity for review and comment by the
5 State, before the new Supervising Contractor performs, directs,
6 or supervises any Work under this Consent Decree.

7 b. If EPA disapproves a proposed Supervising
8 Contractor, EPA will notify Settling Defendants, in writing.
9 Settling Defendants shall submit to EPA and the State a list of
10 contractors, including the qualifications of each contractor,
11 that would be acceptable to them within thirty (30) days of
12 receipt of EPA's disapproval of the contractor previously
13 proposed. EPA will provide written notice of the names of any
14 contractor(s) that it disapproves and an authorization to proceed
15 with respect to any of the other contractors. Settling
16 Defendants may select any contractor from that list that is not
17 disapproved and shall notify EPA and the State of the name of the
18 contractor selected within twenty-one (21) days of EPA's
19 authorization to proceed.

20 c. If EPA fails to provide written notice of its
21 authorization to proceed or disapproval as provided in this
22 paragraph and this failure prevents the Settling Defendants from
23 meeting one or more deadlines in a plan approved by the EPA
24 pursuant to this Consent Decree, Settling Defendants may seek
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relief under the provisions of Section XIX (Force Majeure) hereof.

15. Remedial Design and Remedial Action

a. All Work under this Consent Decree is subject to approval by EPA. Settling Defendants shall, in accordance with their respective SOWs, prepare and submit required deliverables for approval by EPA pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall implement the Work upon approval by EPA, in consultation with the State, of the deliverables required by the SOWs, including the Health and Safety Plans, the Quality Assurance Project Plans, the Sampling Plan, or other plans, designs or reports.

b. Settling Defendants shall submit deliverables and perform the Work, required under their respective SOWs, RDR and RAWPs, in accordance with the schedules set forth and referred to therein. Once deliverables are approved pursuant to Section XII (Submissions Requiring Agency Approval), they shall be deemed incorporated into and be enforceable under this Consent Decree by this reference.

16. Settling Defendants shall only commence on-Site physical activities required to implement the Work with EPA's approval.

17. The Work performed by the Settling Defendants pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

1 18. Settling Defendants acknowledge and agree that
2 nothing in this Consent Decree, the SOWs or any deliverable
3 required by this Consent Decree constitutes a warranty or
4 representation of any kind by Plaintiffs that compliance with the
5 work requirements set forth in the SOWs will achieve the
6 Performance Standards. Settling Defendants' compliance with the
7 work requirements shall not foreclose Plaintiffs from seeking
8 compliance with all terms and conditions of this Consent Decree,
9 including, but not limited to, the applicable Performance
10 Standards.

11 19. Settling Defendants shall, prior to any off-Site
12 shipment of Waste Material to an out-of-state waste management
13 facility or any intra-state off-site shipment of hazardous waste,
14 provide written notification to the appropriate state
15 environmental official in the receiving facility's state and to
16 the EPA Project Coordinator of such shipment. However, this
17 notification requirement shall not apply to any off-Site
18 shipments when the total volume of all such shipments will not
19 exceed ten (10) cubic yards.

20 a. The Settling Defendants shall include in the written
21 notification the following information, where available: (1) the
22 name and location of the facility to which the Waste Material is
23 to be shipped; (2) the type and quantity of the Waste Material to
24 be shipped; (3) the expected schedule for the shipment of the
25 Waste Material; and (4) the method of transportation. The
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1 Settling Defendants shall notify the state in which the planned
2 receiving facility is located of major changes in the shipment
3 plan, such as a decision to ship the Waste Material to another
4 facility within the same state, or to a facility in another
5 state.

6 b. If it is determined that waste will be shipped to a
7 waste management facility, the identity of the receiving facility
8 and state will be determined by the Settling Defendants following
9 the award of the contract for Remedial Action construction. The
10 Settling Defendants shall provide the information required by
11 Paragraph 19(a) as soon as practicable after the award of the
12 contract and before the Waste Material is actually shipped.

14 VII. ADDITIONAL RESPONSE ACTIONS

15 20. In the event that prior to Certification of
16 Completion of the Remedial Action pursuant to Paragraph 52.b, EPA
17 determines or a Settling Defendant proposes that additional
18 response actions are necessary in either of the Respective Areas
19 to meet the Performance Standards or to carry out the remedy
20 selected in the ROD as clarified by the SOWs, RDR, and RAWPs,
21 notification of such additional response actions shall be
22 provided to the appropriate Project Coordinator for the other
23 parties.

24 21. Within thirty (30) days of receipt of notice from
25 EPA pursuant to Paragraph 20 that additional response actions are

1 necessary (or such longer time as may be specified by EPA), the
2 Settling Defendant for the Area shall submit for approval by EPA,
3 after reasonable opportunity for review and comment by the State,
4 a work plan for the additional response actions. Upon approval
5 of the plan pursuant to Section XII (Submissions Requiring Agency
6 Approval), the Settling Defendant shall implement the plan for
7 additional response actions in accordance with the schedule
8 contained therein.

9 22. Any additional response actions that the Settling
10 Defendants propose are necessary to meet the Performance
11 Standards or to carry out the remedy selected in the ROD, as
12 clarified by the SOWs, RDR, and RAWPs, shall be subject to
13 approval by EPA, after reasonable opportunity for review and
14 comment by the State, and, if authorized by EPA, shall be
15 completed by the Settling Defendants in accordance with plans,
16 specifications, and schedules approved or established by EPA
17 pursuant to Section XII (Submissions Requiring Agency Approval).

18 23. Settling Defendants may invoke the procedures set
19 forth in Section XX (Dispute Resolution) to dispute EPA's
20 determination that additional response actions are necessary to
21 meet the Performance Standards or to carry out the remedy
22 selected in the ROD, as clarified by the SOWs, RDR and RAWPs.
23 Such a dispute shall be resolved pursuant to Paragraphs 67-70 of
24 this Consent Decree.

VIII. EPA PERIODIC REVIEW

24. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews of the Remedial Action at least every five (5) years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations to assure that human health and the environment are being protected by the Remedial Action.

25. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, Settling Defendants and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region 10, or his/her delegate will determine in writing whether further response actions are appropriate.

26. If the Regional Administrator, EPA Region 10, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions for their Respective Areas EPA has determined

1 are appropriate, unless their liability for such further response
2 actions is barred by the Covenants Not to Sue set forth in
3 Section XXII (Covenants Not To Sue By Plaintiff). The Settling
4 Defendants shall submit a plan for such work to EPA for approval
5 in accordance with the procedures set forth in Section VI
6 (Performance of the Work by Settling Defendants) and shall
7 implement the plan approved by EPA. The Settling Defendants may
8 invoke the procedures set forth in Section XX (Dispute
9 Resolution) to dispute (1) EPA's determination that the Remedial
10 Action is not protective of human health and the environment,
11 (2) EPA's selection of the further response actions ordered as
12 arbitrary and capricious or otherwise not in accordance with law,
13 or (3) EPA's determination that the Settling Defendants'
14 liability for the further response actions requested is reserved
15 in Paragraphs 86, 87, or 91 or otherwise not barred by the
16 Covenants Not to Sue set forth in Section XXII (Covenants Not To
17 Sue By Plaintiff).

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19 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

20 27. Settling Defendants shall use quality assurance,
21 quality control, and chain-of-custody procedures for all samples
22 in accordance with EPA's "Interim Guidelines and Specifications
23 For Preparing Quality Assurance Project Plans," December 1980,
24 (QAMS-005/80); "Data Quality Objective Guidance,"
25 (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures
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1 Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R);
2 and subsequent amendments to such guidelines upon written
3 notification by EPA to Settling Defendants of such amendment.
4 Amended guidelines shall apply only to procedures conducted after
5 such notification. Prior to the commencement of any monitoring
6 project under this Consent Decree, Settling Defendants shall
7 submit to EPA for approval, after a reasonable opportunity for
8 review and comment by the State, Quality Assurance Project Plans
9 ("QAPP") that are consistent with the SOW, the NCP, and
10 applicable guidance documents. If relevant to the proceeding,
11 the Parties agree that validated sampling data generated in
12 accordance with the QAPP(s) and reviewed and approved by EPA
13 shall be admissible as evidence, without objection, in any
14 proceeding under this Decree. Settling Defendants shall ensure
15 that EPA and State personnel and their authorized representatives
16 are allowed access at reasonable times to all laboratories
17 utilized by Settling Defendants in implementing this Consent
18 Decree. In addition, Settling Defendants shall ensure that such
19 laboratories shall analyze all samples submitted by EPA pursuant
20 to the QAPP for quality assurance monitoring. Settling
21 Defendants shall ensure that the laboratories they utilize for
22 the analysis of samples taken pursuant to this Decree perform all
23 analyses according to accepted or approved EPA methods. Settling
24 Defendants shall ensure that all laboratories they use for
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1 analysis of samples taken pursuant to this Consent Decree
2 participate in an EPA or EPA-equivalent QA/QC program.

3 28. Upon request, the Settling Defendants shall allow
4 split or duplicate samples to be taken by EPA and the State or
5 their authorized representatives. Settling Defendants shall
6 notify EPA and the State not less than fourteen (14) days in
7 advance of any sample collection activity unless shorter notice
8 is agreed to by EPA. In addition, EPA and the State shall have
9 the right to take any additional samples related to performance
10 of the Work or implementation of the Consent Decree that EPA or
11 the State deems necessary. EPA and the State shall provide
12 reasonable notice to the Settling Defendants whenever such
13 samples will be taken. Upon request, EPA and the State shall
14 allow the Settling Defendants to take split or duplicate samples
15 of any samples they take as part of the Plaintiffs' oversight of
16 the Settling Defendants' implementation of the Work.

17 29. Settling Defendants shall submit to EPA and the
18 State four (4) copies of the results of all sampling and/or tests
19 or other data obtained or generated by or on behalf of Settling
20 Defendants with respect to the Work or the implementation of this
21 Consent Decree unless EPA agrees otherwise.

22 30. Notwithstanding any provision of this Consent
23 Decree, the United States and the State hereby retain all of
24 their information gathering and inspection authorities and
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rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS

31. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to such property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents in accordance with Section XXV (Access To Information); and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

32. To the extent that the Site or any other property to which access is required for the implementation of this Consent

Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For the purposes of this paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. To the extent property is owned by a Potentially Responsible Party (PRP) identified by EPA, "best efforts" will not require payment. If any access required to complete the Work is not obtained within forty-five days of the date of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Defendants, in writing, that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States or the State may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred in obtaining access.

33. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities

1 related thereto, under CERCLA, RCRA, and any other applicable
2 statute or regulations.
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4 XI. REPORTING REQUIREMENTS

5 34. In addition to any other requirement of this Consent
6 Decree, the Settling Defendants shall submit four (4) copies to
7 EPA and two (2) copies to the State of written monthly progress
8 reports that: (a) describe the actions taken toward achieving
9 compliance with this Consent Decree during the previous month;
10 (b) include a summary of all results of sampling and tests and
11 all other data received or generated by the Settling Defendants
12 or their contractors or agents in connection with implementation
13 of this Consent Decree in the previous month unless such
14 information has already been submitted to EPA and the State;
15 (c) identify all deliverables required by this Consent Decree
16 completed and submitted during the previous month; (d) describe
17 all actions, including, but not limited to, data collection and
18 implementation of the SOWs, which are scheduled for the next
19 month, and provide other information relating to the progress of
20 activities, including, but not limited to, as relevant, critical
21 path diagrams, Gantt charts and Pert charts; (e) include
22 information regarding percentage of completion, unresolved delays
23 encountered or anticipated that may affect the future schedule
24 for implementation of the Work, and a description of efforts made
25 to mitigate those delays or anticipated delays; (f) include any
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1 modifications to any work plans, or schedules that Settling
2 Defendants have proposed to EPA and the State or that have been
3 approved by EPA; and (g) describe all activities undertaken in
4 support of the Community Relations Plan during the previous month
5 and those to be undertaken in the next month. Settling
6 Defendants shall submit these progress reports to EPA and the
7 State by the tenth (10th) day of every month following the
8 lodging of this Consent Decree until EPA notifies the Settling
9 Defendants pursuant to Paragraph 53(b) of Section XV
10 (Certification of Completion). If requested by EPA or the State,
11 Settling Defendants shall also provide briefings for EPA or the
12 State to discuss the progress of the Work.

13 35. The Settling Defendants shall notify EPA and the
14 State of any change in the schedule described in the monthly
15 progress report for the performance of any activity, including,
16 but not limited to, data collection and implementation of the
17 SOWs and any work plans, no later than seven (7) days prior to
18 the performance of the activity.

19 36. Upon the occurrence of any event during performance
20 of the Work that Settling Defendants are required to report
21 pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section
22 304 of the Emergency Planning and Community Right-to-know Act
23 (EPCRA), 42 U.S.C. § 11004, Settling Defendants shall within
24 twenty-four (24) hours of the onset of such event orally notify
25 the EPA Project Coordinator or the Alternate EPA Project
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1 Coordinator (in the event of the unavailability of the EPA
2 Project Coordinator), or, in the event that neither the EPA
3 Project Coordinator or Alternate EPA Project Coordinator is
4 available, the Emergency Response Section, Region 10, United
5 States Environmental Protection Agency. Settling Defendants
6 shall also notify the Project Coordinator for the State. These
7 reporting requirements are in addition to the reporting required
8 by CERCLA Section 103 or EPCRA Section 304.

9 37. Within twenty (20) days of the onset of such an
10 event, Settling Defendants shall furnish to Plaintiffs a written
11 report, signed by the Settling Defendants' Project Coordinator,
12 setting forth the events which occurred and the measures taken,
13 and to be taken, in response thereto. Within thirty (30) days of
14 the conclusion of such an event, the Settling Defendants' Project
15 Coordinator shall submit a report setting forth all actions taken
16 in response thereto.

17 38. The Settling Defendants shall submit four (4) copies
18 to EPA of all plans, reports, and data required by the SOWs or
19 any other approved work plans in accordance with the schedules
20 set forth in such plans. The Settling Defendants shall submit
21 two (2) copies of all such plans, reports, and data to the State.

22 39. All reports and other documents submitted by
23 Settling Defendants to EPA and the State, other than the monthly
24 progress reports referred to above, which purport to document
25 Settling Defendants' compliance with the terms of this Consent
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Decree shall be signed and submitted by the Settling Defendants' Project Coordinator.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

40. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above.

41. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 40(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 40(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

1 42. a. Upon receipt of a notice of disapproval
2 pursuant to Paragraph 40(d), Settling Defendants shall, within
3 fourteen (14) days or such other time as specified by EPA in such
4 notice, correct the deficiencies and resubmit the plan, report,
5 or other item for approval. Any stipulated penalties applicable
6 to the submission, as provided in Section XXI (Stipulated
7 Penalties), shall continue to accrue during the fourteen (14) day
8 period or otherwise specified period but shall not be payable
9 unless the resubmission is disapproved or modified due to a
10 material defect as provided in Paragraphs 43 and 44.

11 b. Notwithstanding the receipt of a notice of
12 disapproval pursuant to Paragraph 40(d), Settling Defendants
13 shall proceed, at the direction of EPA, to take any action
14 required by any non-deficient portion of the submission.
15 Implementation of any non-deficient portion of a submission shall
16 not relieve Settling Defendants of any liability for stipulated
17 penalties under Section XXI (Stipulated Penalties) as to any
18 deficient portion.

19 43. In the event that a resubmitted plan, report or
20 other item, or portion thereof, is disapproved by EPA, EPA may
21 again require the Settling Defendants to correct the
22 deficiencies, or may itself address the deficiencies, in
23 accordance with the preceding paragraphs. EPA also retains the
24 right to amend or develop the plan, report or other item.
25 Settling Defendants shall implement any such plan, report, or
26

1 item as amended or developed by EPA, subject only to their right
2 to invoke the procedures set forth in Section XX (Dispute
3 Resolution).

4 44. If upon resubmission, a plan, report, or item is
5 disapproved or modified by EPA due to a material defect, Settling
6 Defendants shall be deemed to have failed to submit such plan,
7 report, or item timely and adequately unless the Settling
8 Defendants invoke the dispute resolution procedures set forth in
9 Section XX (Dispute Resolution) and EPA's action is overturned
10 pursuant to that Section. The provisions of Section XX (Dispute
11 Resolution) and Section XXI (Stipulated Penalties) shall govern
12 the implementation of the Work and accrual and payment of any
13 stipulated penalties during Dispute Resolution. If EPA's
14 disapproval or modification is upheld, stipulated penalties shall
15 accrue for such violation from the date on which the initial
16 submission was originally required, as provided in Section XXI
17 (Stipulated Penalties), and shall continue to accrue for thirty
18 (30) days after the due date of the resubmission after which date
19 stipulated penalties shall stop accruing unless and until EPA
20 notifies Settling Defendants that it has modified or disapproved
21 the resubmittal because it contains a material defect, upon which
22 date accrual of stipulated penalties shall resume and shall
23 continue to accrue through the final day of the correction of the
24 noncompliance or completion of the activity.

1 45. All plans, reports, and other items required to be
2 submitted to EPA under this Consent Decree shall, upon approval
3 or modification by EPA, be enforceable under this Consent Decree.
4 In the event EPA approves or modifies a portion of a plan,
5 report, or other item required to be submitted to EPA under this
6 Consent Decree, the approved or modified portion shall be
7 enforceable under this Consent Decree.

8
9 XIII. PROJECT COORDINATORS

10 46. Within twenty (20) days of lodging this Consent
11 Decree, the Settling Defendants, the State, and EPA will notify
12 each other, in writing, of the name, address, and telephone
13 number of their designated Project Coordinators and Alternate
14 Project Coordinators. If a Project Coordinator or Alternate
15 Project Coordinator initially designated is changed, the identity
16 of the successor will be given to the other parties at least
17 five (5) working days before the changes occur, unless
18 impracticable, but in no event later than the actual day the
19 change is made. The Settling Defendants' Project Coordinators
20 shall be subject to disapproval by EPA, which disapproval shall
21 not be unreasonably invoked, and shall have the technical
22 expertise sufficient to adequately oversee all aspects of the
23 Work. The Settling Defendants' Project Coordinators shall not be
24 an attorney for any of the Settling Defendants in this matter.
25 The Settling Defendants' Project Coordinators may assign other
26

1 representatives, including other contractors, to serve as a Site
2 representative for oversight of performance of daily operations
3 during remedial activities.

4 47. Plaintiffs may designate other representatives,
5 including, but not limited to, EPA and State employees, and
6 federal and State contractors and consultants, to observe and
7 monitor the progress of any activity undertaken pursuant to this
8 Consent Decree. EPA's Project Coordinator and Alternate Project
9 Coordinator shall have the authority lawfully vested in a
10 Remedial Project Manager ("RPM") and an On-Scene Coordinator
11 ("OSC") by the NCP, 40 C.F.R. Part 300. In addition, the EPA
12 Project Coordinator, his/her alternate or, to the extent
13 consistent with the Memorandum of Agreement between EPA and the
14 State, the State Project Coordinator or his/her alternate shall
15 have authority, consistent with the NCP, to halt any Work
16 required by this Consent Decree and to take any necessary
17 response action when s/he determines that conditions at the Site
18 constitute an emergency situation or may present an immediate
19 threat to public health or welfare or the environment due to
20 release or threatened release of Waste Material.

21 48. The respective Project Coordinators will meet with
22 EPA and the State, at a minimum, on a monthly basis unless
23 otherwise determined by EPA. This meeting may be held by
24 telephone conference.
25
26

1 49. EPA and the State have entered into a Memorandum of
2 Agreement ("MOA") which defines the respective roles of EPA and
3 the State and is attached hereto as Attachment I. Pursuant to
4 this MOA, the State will have significant oversight
5 responsibilities.

6
7 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

8 50. Within sixty (60) days of entry of this Consent
9 Decree, Settling Defendants shall establish and maintain
10 sufficient financial assurance for performance of their
11 Respective Work in one of the following forms:

- 12 (a) A surety bond guaranteeing performance of their
13 Respective Work;
14 (b) One or more irrevocable letters of credit equalling
15 the total estimated cost of their Respective Work;
16 (c) A trust fund;
17 (d) A guarantee to perform their Respective Work by one
18 or more parent corporations or subsidiaries, or by
19 one or more unrelated corporations that have a
20 substantial business relationship with at least one
21 of the Settling Defendants; or
22 (e) A demonstration that the Settling Defendant
23 satisfies the requirements of 40 C.F.R. Part
24 264.143(f).

25 51. If the Settling Defendants seek to demonstrate the
26 ability to complete their Respective Work through a guarantee by
27 a third party pursuant to Paragraph 50(d) of this Consent Decree,
28 Settling Defendants shall demonstrate that the guarantor
satisfies the requirements of 40 C.F.R. Part 264.143(f). If

1 Settling Defendants seek to demonstrate their ability to complete
2 their Respective Work by means of the financial test or the
3 corporate guarantee pursuant to Paragraph 50(d) or (e), they
4 shall resubmit sworn statements conveying the information
5 required by 40 C.F.R. Part 264.143(f) annually, on or before the
6 end of the first quarter of each calendar year. In the event
7 that EPA, after a reasonable opportunity for review and comment
8 by the State, determines at any time that the financial
9 assurances provided pursuant to this Section are inadequate,
10 Settling Defendants shall, within thirty (30) days of receipt of
11 notice of EPA's determination, obtain and present to EPA for
12 approval one of the other forms of financial assurance listed in
13 Paragraph 50 of this Consent Decree. Settling Defendants'
14 inability to demonstrate financial ability to complete their
15 Respective Work shall not excuse performance of any activities
16 required under this Consent Decree.

17
18 XV. CERTIFICATION OF COMPLETION

19 52. Completion of a Remedial Action

20 a. Within ninety (90) days after either Settling
21 Defendant concludes that its respective Remedial Action has been
22 fully performed and the Performance Standards have been attained
23 in accordance with the RODs as clarified by the applicable SOWs,
24 the Settling Defendant shall schedule and conduct a pre-
25 certification inspection to be attended by Settling Defendant,
26

1 EPA, and the State. If, after the pre-certification inspection,
2 the Settling Defendant still believes that the Remedial Action
3 has been fully performed and the Performance Standards have been
4 attained in accordance with the RODs as clarified by the SOWs, it
5 shall submit a written report requesting certification to EPA for
6 approval, with a copy to the State, pursuant to Section XII
7 (Submissions Requiring Agency Approval) within thirty (30) days
8 of the inspection. In the report, a registered professional
9 engineer shall state that the Remedial Action has been completed
10 in full satisfaction of the requirements of the applicable SOW,
11 RDR and RAWP. In the report, the Settling Defendant's Project
12 Coordinator shall state that the Remedial Action has been
13 completed in full satisfaction of the requirements of this
14 Consent Decree. The written report shall include as-built
15 drawings signed and stamped by a professional engineer. The
16 report shall contain the following statement, signed by a
17 responsible corporate official of the Settling Defendant or the
18 Settling Defendant's Project Coordinator:

19 "To the best of my knowledge, after thorough investigation,
20 I certify that the information contained in or accompanying
21 this submission is true, accurate and complete. I am aware
22 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

23 If, after completion of the pre-certification inspection and
24 receipt and review of the written report, EPA, after reasonable
25 opportunity to review and comment by the State, determines that
26 the Remedial Action has not been completed in accordance with

1 this Consent Decree or that the Performance Standards have not
2 been achieved, EPA will notify the Settling Defendant, in
3 writing, of the activities that must be undertaken to complete
4 the Remedial Action and achieve the Performance Standards and
5 require the Settling Defendant to submit a schedule to EPA for
6 approval pursuant to Section XII (Submissions Requiring Agency
7 Approval). The Settling Defendant shall perform all activities
8 described in the notice in accordance with the specifications and
9 schedules established pursuant to this paragraph, subject to its
10 right to invoke the dispute resolution procedures set forth in
11 Section XX (Dispute Resolution).

12 b. If EPA concludes, based on the initial or any
13 subsequent report requesting Certification of Completion and
14 after a reasonable opportunity for review and comment by the
15 State, that the Remedial Action is fully performed and the
16 Performance Standards have been achieved in accordance with the
17 RODs as clarified by the SOWs, EPA will so certify in writing to
18 the Settling Defendant. This certification shall constitute the
19 Certification of Completion of the Remedial Action for purposes
20 of this Consent Decree, including, but not limited to,
21 Section XXII (Covenants Not to Sue by Plaintiffs). Certification
22 of Completion of the Remedial Action shall not affect the
23 Settling Defendant's obligations under this Consent Decree that
24 continue beyond the Certification of Completion.

25

26

1 53. Completion of the Work

2 a. Within ninety (90) days after either Settling
3 Defendant concludes that all phases of its respective Work
4 (including O & M) have been fully performed, the Settling
5 Defendant shall schedule and conduct a pre-certification
6 inspection to be attended by EPA and the State. If, after the
7 pre-certification inspection, the Settling Defendant still
8 believes that the Work has been fully performed, the Settling
9 Defendant shall submit a written report by a registered
10 professional engineer stating that the Work has been completed in
11 full satisfaction of the requirements of the applicable SOWs, RDR
12 and RAWPs. In the report, the Settling Defendant's Project
13 Coordinator shall state that the Remedial Action has been
14 completed in full satisfaction of the requirements of this
15 Consent Decree. The report shall contain the following statement,
16 signed by a responsible corporate official of the Settling
17 Defendant or the Settling Defendant's Project Coordinator:

18 "To the best of my knowledge, after thorough investigation,
19 I certify that the information contained in or accompanying
20 this submission is true, accurate and complete. I am aware
21 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

22 If, after review of the written report, EPA, after reasonable
23 opportunity to review and comment by the State, determines that
24 any portion of the Work has not been completed in accordance with
25 this Consent Decree, EPA will notify Settling Defendant in
26 writing of the activities that must be undertaken to complete the

1 Work. EPA will set forth in the notice a schedule for
2 performance of such activities consistent with the Consent Decree
3 or require the Settling Defendant to submit a schedule to EPA for
4 approval pursuant to Section XII (Submissions Requiring Agency
5 Approval). The Settling Defendant shall perform all activities
6 described in the notice in accordance with the specifications and
7 schedules established therein, subject to their right to invoke
8 the dispute resolution procedures set forth in Section XX
9 (Dispute Resolution).

10 b. If EPA concludes, based on the initial or any
11 subsequent request for Certification of Completion by the
12 Settling Defendant and after a reasonable opportunity for review
13 and comment by the State, that the Work has been fully performed
14 in accordance with this Consent Decree, EPA will so notify the
15 Settling Defendant, in writing.

16
17 XVI. EMERGENCY RESPONSE

18 54. In the event of any action or occurrence arising in
19 connection with the performance of the Work which causes or
20 threatens a release of Waste Material at or from the Site that
21 constitutes an emergency situation or may present an immediate
22 threat to public health or welfare or the environment, the
23 Settling Defendants shall, subject to Paragraph 55, immediately
24 take all appropriate action to prevent, abate, or minimize such
25 release or threat of release, and shall immediately notify the
26

1 Project Coordinators for EPA and the State, or, if they are
2 unavailable, their alternates. If none of these persons is
3 available, the Settling Defendants shall notify the EPA Emergency
4 Response Unit, Region 10. Settling Defendants shall take such
5 actions in consultation with the EPA Project Coordinator, his/her
6 alternate and to the extent consistent with the Memorandum of
7 Agreement between EPA and the State, the State Project
8 Coordinator or his/her alternate or other available authorized
9 representatives and in accordance with all applicable provisions
10 of the Health and Safety Plans, the Contingency Plans, and any
11 other applicable deliverables developed pursuant to the SOWs. In
12 the event that Settling Defendants fail to take appropriate
13 response action as required by this Section, and EPA or, as
14 appropriate, the State take such action instead, Settling
15 Defendants shall reimburse EPA and the State all costs of the
16 response action not inconsistent with the NCP pursuant to Section
17 XVII (Reimbursement of Response Costs).

18 55. Nothing in the preceding paragraph or in this
19 Consent Decree shall be deemed to limit any authority of the
20 United States, or the State, to take, direct, or order all
21 appropriate action or to seek an order from the Court to protect
22 human health and the environment or to prevent, abate, respond
23 to, or minimize an actual or threatened release of Waste Material
24 on, at, or from the Site.

1 XVII. PAYMENTS AND REIMBURSEMENT OF RESPONSE COSTS

2 56. .a. Within thirty (30) days of the effective date
3 of this Consent Decree, Settling Defendants shall pay the United
4 States the following amounts in the manner set forth below in
5 Paragraph 56.a.4.:

6 1. Stauffer Entities shall remit to the United
7 States the amount of five hundred thousand dollars
8 (\$500,000) required by paragraph 8.d. of this
Consent Decree.

9 2. Stauffer Entities shall remit to the United
10 States the amount of eight hundred fifty thousand
dollars (\$850,000.) required by paragraph 8.e. of
11 this Consent Decree.

12 3. Union Pacific shall remit to the United States
the amount of four hundred twenty five thousand
13 dollars (\$425,000.) required by paragraph 9.d. of
this Consent Decree.

14 4. These payments to the United States shall be
15 made in the form of a certified check made payable
to the "EPA Hazardous Substance Superfund" and
16 referencing the U.S.A.O. file number _____,
the EPA Region and the Site/Spill # 1020 DOJ case
17 number 90-11-3-128I with copies sent to the United
States as specified in Section XXVII (Notices and
18 Submissions). The Settling Defendants shall forward
the certified check to:

19 U.S. Environmental Protection Agency
20 EPA Hazardous Substance Superfund
21 P.O. Box 360903M
 Pittsburgh, Pennsylvania 15251

22 b. Within thirty (30) days of the effective date of this
23 Consent Decree, Settling Defendants shall pay the State the
24 following amounts in the manner set forth below in
25 Paragraph 56.b.5.:

1 1. Stauffer Entities shall remit to the State the
2 amount of one hundred fifty thousand dollars
3 (\$150,000) required by paragraph 8.c. of this
4 Consent Decree.

5 2. Stauffer Entities shall remit to the State the
6 amount of five hundred thousand dollars (\$500,000)
7 required by paragraph 8.d. of this Consent Decree.

8 3. Union Pacific shall remit to the State the
9 amount of one hundred fifty thousand dollars
10 (\$150,000) required by paragraph 9.c. of this
11 Consent Decree.

12 4. Union Pacific shall remit to the State the
13 amount of four hundred twenty-five thousand dollars
14 (\$425,000) required by paragraph 9.d. of this
15 Consent Decree.

16 5. These payments to the State shall be made in the
17 form of certified checks made payable to the "State
18 of Idaho" and shall be placed by the State in the
19 Bunker Hill Cleanup Trust Fund established by the
20 Trust Fund Declaration of the State of Idaho dated
21 May 2, 1994 (Attachment M, Consent Decree, United
22 States of America v. Asarco, Inc., No. CV 94-0207-N-
23 HLR (D. Idaho). Such money shall be utilized by the
24 Trustee for the purposes specified in paragraphs 8.c
25 and 8.d. and 9.c. and 9.d. of this Consent Decree.

26 57. Union Pacific shall reimburse the United States and
27 the State for all Future Response Costs for the Union Pacific
28 Area not inconsistent with the NCP incurred by the United States
and the State. The Stauffer Entities shall reimburse the United
States and the State for all Future Response Costs for the A-4
Gypsum subarea not inconsistent with the NCP incurred by the
United States and the State.

a. The United States will send Settling Defendants a
bill requiring payment that includes a Superfund Cost
Organization Recovery Enhancement System Report on a periodic

1 basis. Settling Defendants shall make all payments within thirty
2 (30) days of Settling Defendants' receipt of each bill requiring
3 payment, except as otherwise provided in Paragraph 58. The
4 Settling Defendants shall make all payments required by this
5 paragraph in the form of a certified check or checks made payable
6 to "EPA Hazardous Substance Superfund" and referencing the
7 U.S.A.O. file number _____, the EPA Region and
8 Site/Spill # 1020 DOJ case number 90-11-3-128I. The Settling
9 Defendants shall forward the certified check(s) to:

10 U.S. Environmental Protection Agency
11 EPA Hazardous Substance Superfund
12 P. O. Box 360903M
13 Pittsburgh, Pennsylvania 15251

14 and shall send copies of the check(s) to the United States as
15 specified in Section XXVII (Notices and Submissions).

16 b. Projected State response costs shall be paid by
17 Settling Defendants in advance. Each year, no later than April
18 1, the State shall provide Settling Defendants a detailed written
19 budget for the following budget year. No later than thirty (30)
20 days prior to the beginning of each budget year (July 1), the
21 Settling Defendants shall fund the first two quarters of the
22 estimated budget. No later than thirty (30) days after the end
23 of each quarter, the State shall provide Settling Defendants with
24 an accounting of actual response costs incurred in such quarter.
25 Payments by Settling Defendants of the third and fourth quarter
26 estimated budget shall be made no later than thirty (30) days
27 prior to such quarter and shall be reconciled against actual

1 response costs incurred in the preceding quarters. Settling
2 Defendants shall pay only those costs actually incurred in
3 implementing oversight activities. Payments required by this
4 paragraph shall be made by certified check made payable to "Idaho
5 Department of Health and Welfare" and shall reference this
6 Consent Decree.

7 58. a. A Settling Defendant may contest payment of any
8 Future Response Costs under Paragraph 57(a) if it determines that
9 the United States has made an accounting error or if it alleges
10 that a cost item that is included represents costs that are
11 inconsistent with the NCP or does not relate to the Union Pacific
12 Area or the A-4 Gypsum subarea. Such objection shall be made, in
13 writing, within thirty (30) days of receipt of the bill and must
14 be sent to the United States pursuant to Section XXVII (Notices
15 and Submissions). Any such objection shall specifically identify
16 the contested Future Response Costs and the basis for objection.
17 In the event of an objection, the Settling Defendant shall within
18 the thirty (30) day period pay all uncontested Future Response
19 Costs to the United States in the manner described in Paragraph
20 57. Simultaneously, the Settling Defendant shall establish an
21 interest bearing escrow account in a federally-insured bank duly
22 chartered in the State of Idaho and remit to that escrow account
23 funds equivalent to the amount of the contested Future Response
24 Costs. The Settling Defendant shall send to the United States,
25 as provided in Section XXVII (Notices and Submissions), a copy of
26

1 the transmittal letter and check paying the uncontested Future
2 Response Costs, and a copy of the correspondence that establishes
3 and funds the escrow account, including, but not limited to,
4 information containing the identity of the bank and bank account
5 under which the escrow account is established as well as a bank
6 statement showing the initial balance of the escrow account.
7 Simultaneously with establishment of the escrow account, the
8 Settling Defendant shall initiate the Dispute Resolution
9 procedures in Section XX (Dispute Resolution). If the United
10 States prevails in the dispute, within five (5) days of the
11 resolution of the dispute, the Settling Defendant shall pay the
12 sums due (with accrued interest) to the United States in the
13 manner described in Paragraph 57. If the Settling Defendant
14 prevails concerning any aspect of the contested costs, the
15 Settling Defendant shall pay that portion of the costs (plus
16 associated accrued interest) for which it did not prevail to the
17 United States in the manner described in Paragraph 57(a);
18 Settling Defendant shall be disbursed any balance of the escrow
19 account. The dispute resolution procedures set forth in this
20 paragraph in conjunction with the procedures set forth in Section
21 XX (Dispute Resolution) shall be the exclusive mechanisms for
22 resolving disputes regarding the Settling Defendant's obligation
23 to reimburse the United States for its Future Response Costs.

24 b. In the event a Settling Defendant contends that
25 payment of estimated response costs to the State in accordance
26

1 with Paragraph 57(b) would include costs inconsistent with the
2 NCP, costs resulting from an accounting error or costs not
3 relating to the Union Pacific Area or the A-4 Gypsum subarea, the
4 Settling Defendant shall make timely payment of undisputed
5 estimated response costs and, at the same time, specifically
6 identify the disputed costs. The Settling Defendant and the
7 State agree to attempt informal resolution of the dispute during
8 the fourteen (14) day period following notification by the
9 Settling Defendant of its objection. At the end of the fourteen
10 (14) day informal dispute resolution period, Settling Defendant
11 shall either pay the disputed costs or notify the State that
12 Settling Defendant will seek judicial review of the disputed
13 costs on the basis that such costs are either inconsistent with
14 the NCP or the result of an accounting error.

15 59. In the event that the payments required by
16 Paragraph 56 are not made within thirty (30) days of the
17 effective date of this Consent Decree or the payments required by
18 Paragraph 57(a) are not made within thirty (30) days of the
19 Settling Defendants' receipt of the bill, Settling Defendants
20 shall pay interest on the unpaid balance at the rate established
21 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The
22 interest on Future Response Costs shall begin to accrue
23 forty-five (45) days after the Settling Defendants' receipt of
24 the bill. Interest shall accrue at the rate specified through
25 the date of the Settling Defendant's payment. Payments of

1 interest made under this paragraph shall be in addition to such
2 other remedies or sanctions available to Plaintiffs by virtue of
3 Settling Defendants' failure to make timely payments under this
4 Section.

5 XVIII. INDEMNIFICATION AND INSURANCE

6 60. The United States and the State do not assume any
7 liability by entering into this Consent Decree or by virtue of
8 any designation of Settling Defendants as EPA's authorized
9 representatives under Section 104(e) of CERCLA,
10 42 U.S.C. § 9604(e). Each of the Settling Defendants shall
11 indemnify, save and hold harmless the United States, the State,
12 and their officials, agents, employees, contractors,
13 subcontractors, or representatives for or from any and all claims
14 or causes of action arising from, or on account of, the acts or
15 omissions of that Settling Defendant, and its respective
16 officers, directors, employees, agents, contractors,
17 subcontractors, and any persons acting on its behalf or under its
18 control, in carrying out activities pursuant to this Consent
19 Decree, including, but not limited to, any claims arising from
20 any designation of that Settling Defendant as EPA's authorized
21 representatives under Section 104(e) of CERCLA, 42 U.S.C.
22 § 9604(e). Further, each Settling Defendant agrees to pay the
23 United States and the State all costs it incurs, including, but
24 not limited to, attorneys fees and other expenses of litigation
25 and settlement arising from, or on account of, claims made

1 against the United States and the State based on acts or
2 omissions of that Settling Defendant, its officers, directors,
3 employees, agents, contractors, subcontractors, and any persons
4 acting on its behalf or under its control, in carrying out
5 activities pursuant to this Consent Decree. Neither the United
6 States nor the State shall be held out as a party to any contract
7 entered into by or on behalf of Settling Defendants in carrying
8 out activities pursuant to this Consent Decree. Neither the
9 Settling Defendants nor any such contractor shall be considered
0 an agent of the United States or the State.

1 61. Each Settling Defendant waives all claims against
2 the United States and the State for damages or reimbursement or
3 for set-off of any payments made or to be made to the United
4 States or the State, arising from or on account of any contract,
5 agreement, or arrangement between that Settling Defendant and any
6 person for performance of Work on or relating to the Site,
7 including, but not limited to, claims on account of construction
8 delays. In addition, each of the Settling Defendants shall
9 indemnify and hold harmless the United States and the State with
0 respect to any and all claims for damages or reimbursement
1 arising from or on account of any contract, agreement, or
2 arrangement between that Settling Defendant, and any person for
3 performance of Work on or relating to the Site, including, but
4 not limited to, claims on account of construction delays.
5
6
7

62. No later than fifteen (15) days before commencing any on-Site Work, the Settling Defendants shall secure, and each shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Actions pursuant to Paragraph 52(b) of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of ten million dollars, combined single limit naming the United States and the State as additional insured, unless the Settling Defendant can provide EPA with written documentation that the Settling Defendant is self-insured at least up to ten million dollars and, in addition, provides EPA with written documentation of the Settling Defendant's financial assurance which satisfies the requirements of 40 C.F.R. Part 264.143(f). The self-insurance and financial assurance documentation must be submitted to EPA annually on or before the end of the first quarter of each calendar year. In addition, for the duration of this Consent Decree, the Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and

1 copies of policies each year on the anniversary of the effective
2 date of this Consent Decree. If Settling Defendants demonstrate
3 by evidence satisfactory to EPA and the State that any contractor
4 or subcontractor maintains insurance equivalent to that described
5 above, or insurance covering the same risks but in a lesser
6 amount, then, with respect to that contractor or subcontractor,
7 Settling Defendants need provide only that portion of the
8 insurance described above which is not maintained by the
9 contractor or subcontractor.

10
11 XIX. FORCE MAJEURE

12 63. "Force Majeure", for purposes of this Consent
13 Decree, is defined as any event arising from causes beyond the
14 control of the Settling Defendants or of any entity controlled by
15 Settling Defendants, including, but not limited to, their
16 contractors and subcontractors, that delays or prevents the
17 performance of any obligation under this Consent Decree despite
18 Settling Defendants' best efforts to fulfill the obligation. The
19 requirement that the Settling Defendants exercise "best efforts
20 to fulfill the obligation" includes using best efforts to
21 anticipate any potential Force Majeure event and best efforts to
22 address the effects of any potential Force Majeure event (1) as
23 it is occurring and (2) following the potential Force Majeure
24 event, such that the delay is minimized to the greatest extent
25 possible. "Force Majeure" does not include financial inability

1 to complete the Work or a failure to attain the Performance
2 Standards.

3 64. If any event occurs or has occurred that may delay
4 the performance of any obligation under this Consent Decree,
5 whether or not caused by a Force Majeure event, the Settling
6 Defendants shall notify orally the EPA and State Project
7 Coordinators or, in their absence, their alternates or, in the
8 event these representatives are unavailable, the Director of the
9 Hazardous Waste Division, EPA Region 10, within forty-eight (48)
10 hours of when Settling Defendants first knew or should have known
11 that the event might cause a delay. Within five (5) days
12 thereafter, Settling Defendants shall provide in writing to EPA
13 and the State an explanation and description of the reasons for
14 the delay; the anticipated duration of the delay; all actions
15 taken or to be taken to prevent or minimize the delay; a schedule
16 for implementation of any measures to be taken to prevent or
17 mitigate the delay or the effect of the delay; the Settling
18 Defendants' rationale for attributing such delay to a Force
19 Majeure event if they intend to assert such a claim; and a
20 statement as to whether, in the opinion of the Settling
21 Defendants, such event may cause or contribute to an endangerment
22 to public health, welfare or the environment. The Settling
23 Defendants shall include with any notice all available
24 documentation supporting their claim that the delay was
25 attributable to a Force Majeure. Failure to comply with the
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1 above requirements shall preclude Settling Defendants from
2 asserting any claim of Force Majeure for that event. Settling
3 Defendants shall be deemed to have notice of any circumstance of
4 which their contractors or subcontractors had or should have had
5 notice.

6 65. If EPA, after a reasonable opportunity for review
7 and comment by the State, agrees that the delay or anticipated
8 delay is attributable to a Force Majeure event, the time for
9 performance of the obligations under this Consent Decree that are
10 affected by the Force Majeure event will be extended by EPA,
11 after a reasonable opportunity for review and comment by the
12 State, for such time as is necessary to complete those
13 obligations. An extension of the time for performance of the
14 obligations affected by the Force Majeure event shall not, of
15 itself, extend the time for performance of any other obligation.
16 If EPA, after a reasonable opportunity for review and comment by
17 the State, does not agree that the delay or anticipated delay has
18 been or will be caused by a Force Majeure event, EPA will notify
19 the Settling Defendants, in writing, of its decision. If EPA,
20 after a reasonable opportunity for review and comment by the
21 State, agrees that the delay is attributable to a Force Majeure
22 event, EPA will notify the Settling Defendants in writing of the
23 length of the extension, if any, for performance of the
24 obligations affected by the Force Majeure event.

1 66. If the Settling Defendants elect to invoke the
2 dispute resolution procedures set forth in Section XX (Dispute
3 Resolution), the Settling Defendants shall do so no later than
4 fifteen (15) days after receipt of EPA's notice. In any such
5 proceeding, the Settling Defendants shall have the burden of
6 demonstrating by a preponderance of the evidence that the delay
7 or anticipated delay has been or will be caused by a Force
8 Majeure event, that the duration of the delay or the extension
9 sought was or will be warranted under the circumstances, that
10 best efforts were exercised to avoid and mitigate the effects of
11 the delay, and that Settling Defendants complied with the
12 requirements of Paragraphs 63 and 64, above. If the Settling
13 Defendants carry this burden, the delay at issue shall be deemed
14 not to be a violation by Settling Defendants of the affected
15 obligation of this Consent Decree identified to EPA and the
16 Court.

17
18 XX. DISPUTE RESOLUTION

19 67. Unless otherwise expressly provided for in this
20 Consent Decree, the dispute resolution procedures of this Section
21 shall be the exclusive mechanism to resolve disputes arising
22 under or with respect to this Consent Decree. However, the
23 procedures set forth in this Section shall not apply to actions
24 by the United States or the State to enforce obligations of the
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1 Settling Defendants that have not been disputed in accordance
2 with this Section.

3 68. Any dispute which arises under or with respect to
4 this Consent Decree shall in the first instance be the subject of
5 informal negotiations between the parties to the dispute. The
6 period for informal negotiations shall be twenty (20) days from
7 the time the dispute arises, unless it is modified by written
8 agreement of the parties to the dispute. The dispute shall be
9 considered to have arisen when one party sends the other parties
0 a written Notice of Dispute.

1 69. a. In the event that the parties to the dispute
2 cannot resolve a dispute by informal negotiations under the
3 preceding paragraph, then the position advanced by EPA shall be
4 considered binding unless, within ten (10) days after the
5 conclusion of the informal negotiation period, the Settling
6 Defendant who is a party to the dispute invokes the formal
7 dispute resolution procedures of this Section by serving on the
8 United States, the State and the other Settling Defendant a
9 written Statement of Position on the matter in dispute,
0 including, but not limited to, any factual data, analysis or
1 opinion supporting that position and any supporting documentation
2 relied upon by the Settling Defendant. The Statement of Position
3 shall specify the Settling Defendant's position as to whether
4 formal dispute resolution should proceed under Paragraph 70 or
5 71.

1 b. Within fourteen (14) days after receipt of
2 Settling Defendant's Statement of Position, EPA will serve on the
3 State and the Settling Defendant who is a party to the dispute,
4 its Statement of Position, including, but not limited to, any
5 factual data, analysis, or opinion supporting that position and
6 all supporting documentation relied upon by EPA. EPA's Statement
7 of Position shall include a statement as to whether formal
8 dispute resolution should proceed under Paragraph 70 or 71.

9 c. If there is disagreement between EPA and the
10 Settling Defendant who is a party to the dispute, as to whether
11 dispute resolution should proceed under Paragraph 70 or 71, the
12 parties to the dispute shall follow the procedures set forth in
13 the paragraph determined by EPA to be applicable. However, if
14 the Settling Defendant ultimately appeals to the court to resolve
15 the dispute, the Court shall determine which paragraph is
16 applicable in accordance with the standards of applicability set
17 forth in Paragraphs 70 and 71.

18 70. Formal dispute resolution for disputes pertaining to
19 the selection or adequacy of any response action and all other
20 disputes that are accorded review on the administrative record
21 under applicable principles of administrative law shall be
22 conducted pursuant to the procedures set forth in this paragraph.
23 For purposes of this paragraph, the adequacy of any response
24 action includes, without limitation: (1) the adequacy or
25 appropriateness of plans, procedures to implement plans, or any
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1 other items requiring approval by EPA under this Consent Decree;
2 and (2) the adequacy of the performance of response actions taken
3 pursuant to this Consent Decree. Nothing in this Consent Decree
4 shall be construed to allow any dispute by Settling Defendants
5 regarding the validity of the RODs' provisions.

6 a. An administrative record of the dispute shall be
7 maintained by EPA and shall contain all statements of position,
8 including supporting documentation, submitted pursuant to this
9 paragraph. Where appropriate, EPA may allow submission of
0 supplemental statements of position by the parties to the
1 dispute.

2 b. The Director of the Hazardous Waste Division,
3 EPA Region 10, will issue a final administrative decision
4 resolving the dispute based on the administrative record
5 described in Paragraph 70(a). This decision shall be binding
6 upon the Settling Defendant who is a party to the dispute,
7 subject only to the right to seek judicial review pursuant to
8 Paragraph 70(c) and (d).

9 c. Any administrative decision made by EPA pursuant
10 to Paragraph 70(b) shall be reviewable by this Court, provided
11 that a notice of judicial appeal is filed with the Court by the
12 Settling Defendant who is the party to the dispute and served on
13 the United States, the State, and the other Settling Defendant
14 within ten (10) days of receipt of EPA's decision. The notice of
15 judicial appeal shall include a description of the matter in
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1 dispute, the efforts made by the parties to resolve it, the
2 relief requested, and the schedule, if any, within which the
3 dispute must be resolved to ensure orderly implementation of this
4 Consent Decree. The United States may file a response to
5 Settling Defendant's notice of judicial appeal.

6 d. In proceedings on any dispute governed by this
7 paragraph, Settling Defendants shall have the burden of
8 demonstrating that the decision of the Hazardous Waste Division
9 Director is arbitrary and capricious or otherwise not in
10 accordance with law. Judicial review of EPA's decision shall be
11 on the administrative record compiled pursuant to Paragraph
12 70(a).

13 71. Formal dispute resolution for disputes that neither
14 pertain to the selection or adequacy of any response action nor
15 are otherwise accorded review on the administrative record under
16 applicable principles of administrative law shall be governed by
17 this paragraph.

18 a. Following receipt of Settling Defendant's
19 Statement of Position submitted pursuant to Paragraph 69, the
20 Director of the Hazardous Waste Division, EPA Region 10, will
21 issue a final decision resolving the dispute. The Hazardous
22 Waste Division Director's decision shall be binding on the
23 Settling Defendant unless, within ten (10) days of receipt of the
24 decision, the Settling Defendant who is a party to the dispute
25 files with the Court and serves on the United States, the State
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1 and the other Settling Defendant a notice of judicial appeal
2 setting forth the matter in dispute, the efforts made by the
3 parties to resolve it, the relief requested, and the schedule, if
4 any, within which the dispute must be resolved to ensure orderly
5 implementation of the Consent Decree. The United States may file
6 a response to Settling Defendant's notice of judicial appeal.

7 b. Notwithstanding Paragraph R of Section I
8 (Background) of this Consent Decree, judicial review of any
9 dispute governed by this paragraph shall be governed by
10 applicable provisions of law.

11 72. The invocation of formal dispute resolution
12 procedures under this Section shall not extend, postpone, or
13 affect in any way any obligation of the Settling Defendants under
14 this Consent Decree not directly in dispute, unless EPA or the
15 Court agrees otherwise. Stipulated penalties with respect to the
16 disputed matter shall continue to accrue but payment shall be
17 stayed pending resolution of the dispute as provided in Paragraph
18 82. Notwithstanding the stay of payment, stipulated penalties
19 shall accrue from the first day of noncompliance with any
20 applicable provision of this Consent Decree. In the event that
21 the Settling Defendant does not prevail on the disputed issue,
22 stipulated penalties shall be assessed and paid as provided in
23 Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

73. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 74 and 75 to the United States for failure to comply with the requirements of this Consent Decree specified below which pertain to them, unless excused under Section XIX (Force Majeure).

"Compliance" by the Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOWs, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

74. a. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st - 14th day
\$5,000	15th - 30th day
\$10,000	31st day and beyond

b. Activities/Deliverables

-Submission of Work Plan(s) in compliance with the SOWs.

-Initiation of remediation construction activities in compliance with the SOWs and approved Work Plans.

-Completion of the Remedial Action in compliance with the SOWs and the approved Work Plans.

1 75. For all other requirements of this Consent Decree,
2 stipulated penalties shall accrue in the following amounts:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st - 14th day
\$1,000.00	15th - 30th day
\$5,0000.00	31st day and beyond

7 76. In the event that EPA assumes performance of a
8 portion or all of the Work pursuant to Paragraph 92 of
9 Section XXII (Covenants Not to Sue by Plaintiffs), Settling
10 Defendants shall be liable for an additional stipulated penalty
11 in the amount of three (3) times the cost incurred by EPA to
12 perform the Work or \$100,000.00, whichever is less.

13 77. Except as provided in Paragraph 44, all penalties
14 shall begin to accrue on the day after the complete performance
15 is due or the day a violation occurs, and shall continue to
16 accrue through the final day of the correction of the
17 noncompliance or completion of the activity. Nothing herein
18 shall prevent the simultaneous accrual of separate penalties for
19 separate violations of this Consent Decree.

20 78. In its sole, unreviewable discretion, EPA may waive
21 all or a portion of the stipulated penalties due under this
22 Section.

23 79. Following EPA's determination that Settling
24 Defendants have failed to comply with a requirement of this
25 Consent Decree, EPA may give Settling Defendants written.
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1 notification of the same and describe the noncompliance. EPA may
2 send the Settling Defendants a written demand for the payment of
3 the penalties. However, penalties shall accrue as provided in
4 Paragraph 77 regardless of whether EPA has notified the Settling
5 Defendants of a violation.

6 80. All penalties owed to the United States under this
7 section shall be due and payable within thirty (30) days of the
8 Settling Defendants' receipt of a demand for payment of
9 penalties, unless Settling Defendants invoke the Dispute
10 Resolution procedures under Section XX (Dispute Resolution). All
11 payments under this Section shall be paid by certified check made
12 payable to "EPA Hazardous Substances Superfund," shall be mailed
13 to US Environmental Protection Agency, EPA Hazardous Substance
14 Superfund, P.O. Box 360903M, Pittsburgh, PA 15251 and shall
15 reference the U.S.A.O file number _____, the EPA
16 Region and Site/Spill ID #1020, and DOJ case number 90-11-3-128I.
17 Copies of check(s) paid pursuant to this Section, and any
18 accompanying transmittal letter(s), shall be sent to the United
19 States as provided in Section XXVII (Notices and Submissions).

20 81. The payment of penalties shall not alter in any way
21 Settling Defendants' obligation to complete the performance of
22 the Work required under this Consent Decree.

23 82. Penalties shall continue to accrue as provided in
24 Paragraph 77 during any dispute resolution period, but need not
25 be paid until the following:

1 a. If the dispute is resolved by agreement or by a
2 decision of EPA that is not appealed to this Court, accrued
3 penalties determined to be owing shall be paid to EPA within
4 fifteen (15) days of the agreement or the receipt of EPA's
5 decision or order;

6 b. If the dispute is appealed to this Court and
7 the United States prevails in whole or in part, Settling
8 Defendants shall pay all accrued penalties determined by the
9 Court to be owed to EPA within sixty (60) days of receipt of the
0 Court's decision or order, except as provided in Subparagraph c
1 below;

2 c. If the District Court's decision is appealed by
3 any Party, Settling Defendants shall pay all accrued penalties
4 determined by the District Court to be owing to the United States
5 into an interest-bearing escrow account within sixty (60) days of
6 receipt of the Court's decision or order. Penalties shall be
7 paid into this account as they continue to accrue, at least every
8 sixty (60) days. Within fifteen (15) days of receipt of the
9 final appellate court decision, the escrow agent shall pay the
0 balance of the account to EPA or to Settling Defendants to the
1 extent that they prevail.

2 83. a. If Settling Defendants fail to pay stipulated
3 penalties when due, the United States may institute proceedings
4 to collect the penalties, as well as interest. Settling
5 Defendants shall pay interest on the unpaid balance, which shall
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begin to accrue on the date of demand made pursuant to Paragraph 80 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

84. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

85. a. In consideration of the actions that will be performed and payments that will be made by the Stauffer Entities under the terms of the Consent Decree, and except as specifically provided in Paragraphs 86, 87, and 91 of this Section, the United States covenants not to sue or to take administrative action against the Stauffer Entities pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. In consideration of the actions that will be performed and payments that will be made by the Stauffer Entities under the terms of the Consent Decree, and except as specifically provided in Paragraphs 88, 89,

1 and 91 of this Section, the State covenants not to sue or to take
2 action against the Stauffer Entities pursuant to Section 107(a)
3 of CERCLA, 42 U.S.C. § 9607(a), the Hazardous Waste Management
4 Act, Idaho Code Section § 39-4401, et. seq., and the
5 Environmental Protection and Health Act, Idaho Code Section
6 § 39-101, et. seq., relating to the Site. With respect to all
7 past costs at the Site, and past and future liability at the Site
8 in areas outside the NIPC Area, the covenant not to sue shall
9 take effect upon payment of the amounts set forth in Paragraph
0 8(d) of the Consent Decree. With respect to the ICP, the
1 covenant not to sue shall take effect upon payment of the amounts
2 set forth in Paragraph 8(c). With respect to the Stauffer
3 Entities' future liability for the Phosphoric Acid/Fertilizer
4 Plant subarea, the covenant not to sue shall be effective upon
5 payment of the amount in Paragraph 8(e). With respect to the
6 Stauffer Entities future liability for the A-4 Gypsum subarea,
7 the covenant not to sue shall take effect for the Remedial Action
8 upon Certification of Completion by EPA pursuant to Paragraph
9 52(b) of Section XV (Certification of Completion) of the Remedial
0 Action. These covenants not to sue are conditioned upon the
1 complete and satisfactory performance by the Stauffer Entities of
2 their obligations under this Consent Decree. The covenants not
3 to sue extend only to the Stauffer Entities and, with respect to
4 liability derived from the Stauffer Entities, to its successors
5 and assigns, and do not extend to any other person.

1 b. In consideration of the actions that will be
2 performed and payments that will be made by Union Pacific under
3 the terms of the Consent Decree, and except as specifically
4 provided in Paragraphs 86, 87, and 91 of this Section, the United
5 States covenants not to sue or to take administrative action
6 against Union Pacific pursuant to Sections 106 and 107(a) of
7 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA,
8 42 U.S.C. § 6973, relating to the Site. In consideration of the
9 actions that will be performed and payments that will be made by
10 Union Pacific under the terms of the Consent Decree, and except
11 as specifically provided in Paragraphs 88, 89, and 91 of this
12 Section, the State covenants not to sue or to take action against
13 Union Pacific pursuant to Section 107(a) of CERCLA, 42 U.S.C.
14 § 9607(a), the Hazardous Waste Management Act, Idaho Code Section
15 § 39-4401, et. seq., and the Environmental Protection and Health
16 Act, Idaho Code Section § 39-101, et. seq., relating to the
17 Site. With respect to all past costs at the Site, and past and
18 future liability at the Site in areas outside the Union Pacific
19 Area, the covenant not to sue shall take effect upon payment of
20 the amounts set forth in Paragraph 9(d) of the Consent Decree.
21 With respect to the ICP, the covenant not to sue shall take
22 effect upon payment of the amounts set forth in Paragraph 9(c).
23 With respect to Union Pacific's future liability for the Union
24 Pacific Area, the covenant not to sue shall take effect for the
25 Remedial Action upon Certification of Completion by EPA pursuant

to Paragraph 52(b) of Section XV (Certification of Completion) of the Remedial Action. These covenants not to sue are conditioned upon the complete and satisfactory performance by Union Pacific of its obligations under this Consent Decree. These covenants not to sue extend only to Union Pacific and, with respect to liability derived from Union Pacific, to its successors and assigns, and do not extend to any other person.

86. United States' Pre-Certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to any right to institute proceedings in this action or in a new action, or issue an administrative order seeking to compel the Settling Defendants (1) to perform further response actions relating to their Respective Area; or (2) to reimburse the United States for additional costs of response attributable to their Respective Area, if, prior to Certification of Completion of the Remedial Action or prior to issuance of a notice by EPA that the Phosphoric Acid/Fertilizer Plant subarea remediation is completed,

(i) conditions within the Respective Area, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial

1 Action or the Phosphoric Acid/Fertilizer Plant subarea
2 remediation is not protective of human health and the
3 environment.

4 87. United States Post-Certification Reservations

5 Notwithstanding any other provision of this Consent
6 Decree, the United States reserves, and this Consent Decree is
7 without prejudice to any right to institute proceedings in this
8 action or in a new action, or issue an administrative order
9 seeking to compel the Settling Defendants (1) to perform further
10 response actions relating to their Respective Area; or (2) to
11 reimburse the United States for additional costs of response
12 attributable to their Respective Area, if, subsequent to
13 Certification of Completion of a Remedial Action or subsequent to
14 issuance of a notice by EPA that the Phosphoric Acid/Fertilizer
15 Plant subarea remediation is completed,

16 (i) conditions within the Respective Area, previously
17 unknown to EPA, are discovered, or

18 (ii) information, previously unknown to EPA, is received
19 in whole or in part,

20 and these previously unknown conditions or information together
21 with any other relevant information indicate that the Remedial
22 Action or the Phosphoric Acid/Fertilizer Plant subarea
23 remediation is not protective of human health and the
24 environment.

1 88. State of Idaho's Pre-Certification Reservations

2 Notwithstanding any other provision of this Consent
3 Decree, the State reserves, and this Consent Decree is without
4 prejudice to any right it may have, jointly with, or separately
5 from the United States, to institute proceedings in this action
6 or in a new action pursuant to the State's authorities under
7 Section 107 of CERCLA or applicable State law, including the
8 Hazardous Waste Management Act, Idaho Code Section § 39-4401,
9 et seq., and, the Environmental Protection and Health Act, Idaho
0 Code Section § 39-101, et seq., seeking (1) to compel Settling
1 Defendants to perform further response actions relating to their
2 Respective Area, or (2) to compel Settling Defendants to
3 reimburse the State for additional costs of response attributable
4 to their Respective Area, if, prior to Certification of
5 Completion of the Remedial Action or prior to issuance of a
6 notice by EPA that the Phosphoric Acid/Fertilizer Plant subarea
7 remediation is completed,

8 (i) conditions within the Respective Area, previously
9 unknown to the State, are discovered, or

0 (ii) information, previously unknown to the State, is
1 received in whole or in part,

2 and these previously unknown conditions or information together
3 with any other relevant information indicate that the Remedial
4 Action or the Phosphoric Acid/Fertilizer Plant subarea
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1 remediation is not protective of human health and the
2 environment.

3 89. State of Idaho's Post-Certification Reservations

4 Notwithstanding any other provision of this Consent
5 Decree, the State reserves, and this Consent Decree is without
6 prejudice to any right it may have, jointly with, or separately
7 from the United States, to institute proceedings in this action
8 or in a new action pursuant to the State's authorities under
9 Section 107 of CERCLA or applicable State law, including the
10 Hazardous Waste Management Act, Idaho Code Section § 39-4401,
11 et seq., and, the Environmental Protection and Health Act, Idaho
12 Code Section § 39-101 et seq., seeking (1) to compel Settling
13 Defendants to perform further response actions relating to their
14 Respective Area, or (2) to compel Settling Defendants to
15 reimburse the State for additional costs of response attributable
16 to their Respective Area, if subsequent to Certification of
17 Completion of a Remedial Action or subsequent to issuance of a
18 notice by EPA that the Phosphoric Acid/Fertilizer Plant subarea
19 remediation is completed,:

20 (i) conditions within the Respective Area, previously
21 unknown to the State, are discovered, or

22 (ii) information, previously unknown to the State, is
23 received in whole or in part,

24 and these previously unknown conditions or information together
25 with any other relevant information indicate that the Remedial
26

1 Action or the Phosphoric Acid/Fertilizer Plant subarea
2 remediation is not protective of human health and the
3 environment.

4 90. For purposes of Paragraphs 86 and 88, the
5 information and the conditions known to EPA and the State shall
6 include only that information and those conditions set forth in
7 the RODs for the Site and the Administrative Record supporting
8 the RODs. For purposes of Paragraph 87 and 89, the information
9 and the conditions known to EPA and the State shall include only
10 that information and those conditions set forth in the RODs, the
11 Administrative Record supporting the RODs, and any information
12 received by EPA pursuant to the requirements of this Consent
13 Decree prior to Certification of Completion of the Remedial
14 Action, or, as to the PAFP subarea, prior to issuance of notice
15 by EPA that the PAFP Remedial Action is completed.

16 91. General reservations of rights. Notwithstanding
17 any other provision of this Consent Decree, the covenants not to
18 sue set forth above do not pertain to any matters other than
19 those expressly specified in Paragraph 85. The United States and
20 the State reserve, and this Consent Decree is without prejudice
21 to, all rights against Settling Defendants with respect to all
22 other matters, including but not limited to, the following:

- 23 (1) claims based on a failure by Settling Defendants to
24 meet a requirement under this Consent Decree;
- 25 (2) liability arising from the past, present, or future
26 disposal, release, or threat of release of Waste
27 Materials outside of the Site;

- (3) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release;
- (4) liability for response costs that have been or may be incurred by any natural resource trustees;
- (5) criminal liability;
- (6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- (7) liability for response costs incurred and/or response actions taken outside of the Site;
- (8) liability for releases or threatened releases of hazardous substances resulting from activities of the Settling Defendants in or affecting the Site after entry of the Consent Decree.

92. In the event EPA, after consultation with the State, determines that Settling Defendants have failed to implement any provisions of their Work in an adequate or timely manner, EPA or, upon request by EPA, the State, may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States or the State in performing the Work pursuant to this paragraph shall be considered Future Response Costs that

1 Settling Defendants shall pay pursuant to Section XVII
2 (Reimbursement of Response Costs).

3 93. Notwithstanding any other provisions of this Consent
4 Decree, the United States and the State retain all authority and
5 reserve all rights to take any and all response actions
6 authorized by law.

7
8 XXIII. COVENANTS BY SETTLING DEFENDANTS

9 94. Except as limited in this paragraph, Settling
0 Defendants hereby covenant not to sue and agree not to assert any
1 claims or causes of action against the United States, the State
2 or any Idaho county, city, or local governmental entity with
3 respect to the Site or this Consent Decree, including, but not
4 limited to, any direct or indirect claim for reimbursement from
5 the Hazardous Substance Superfund (established pursuant to the
6 Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections
7 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612,
8 9613 or any other provision of law, any claim against the United
9 States, including any department, agency or instrumentality of
0 the United States under CERCLA Section 107 or 113 related to the
1 Site, any claim against the State or any Idaho county, city or
2 local governmental entity under CERCLA Section 107 or 113 related
3 to the Site or any claims arising out of response activities at
4 the Site. However, the Settling Defendants reserve, and this
5 Consent Decree is without prejudice to, actions against the
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1 United States, the State or any Idaho county, city or local
2 government entity based on negligent actions taken directly by
3 such entities (not including oversight of or approval of the
4 Settling Defendants' plans or activities) that are brought
5 pursuant to any statute other than CERCLA and for which the
6 waiver of sovereign immunity is found in a statute other than
7 CERCLA to the extent such claim exists or may exist in the
8 future. In addition, the Settling Defendants reserve, and this
9 Consent Decree is without prejudice to, contribution actions
10 against the United States or the State or any department, agency
11 or instrumentality thereof, or any Idaho county, city or local
12 government entity whether or not still in existence, under CERCLA
13 Sections 107(a) and 113(f)(1), 42 U.S.C. §§ 9607(a) and
14 9613(f)(1), for natural resource damages. The Settling
15 Defendants also reserve and this Consent Decree is without
16 prejudice to, actions or claims against the State or any Idaho
17 county, city, or local government entity under Section 107(a) and
18 113(f)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f)(1), for
19 response costs incurred by Settling Defendants unrelated to
20 implementation of the RODs as a result of activities at the Site
21 taken by such government entity after the effective date of this
22 Consent Decree (not including the activities of any such
23 government entity pursuant to this Consent Decree). Nothing in
24 this Consent Decree shall be deemed to constitute

1 preauthorization of a claim within the meaning of Section 111 of
2 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

3 95. Each Settling Defendant hereby expressly covenants
4 not to sue any other Settling Defendant and its officers,
5 directors, parents, successors, assigns, subsidiaries, employees
6 or agents with respect to matters covered by this Consent Decree,
7 except for claims premised on the failure of a Settling Defendant
8 to perform its obligations under this Consent Decree or under any
9 agreement among some or all Settling Defendants which addresses
0 responsibilities pertaining to this Consent Decree.

1
2 **XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

3 96. Nothing in this Consent Decree shall be construed to
4 create any rights in, or grant any cause of action to, any person
5 not a party to this Consent Decree. The preceding sentence shall
6 not be construed to waive or nullify any rights that any person
7 not a signatory to this Consent Decree may have under applicable
8 law. Each of the Parties expressly reserves any and all rights
9 (including, but not limited to, any right to contribution),
0 defenses, claims, demands, and causes of action which each party
1 may have with respect to any matter, transaction, or occurrence
2 relating in any way to the Site against any person not a party
3 hereto. Nothing in this paragraph shall negate Settling
4 Defendants' covenant not to sue any Idaho county, city, or local
5 government entity as provided in Paragraph 94.

1 97. With regard to claims for contribution against
2 Settling Defendants for matters addressed in this Consent Decree,
3 the Parties hereto agree that the Settling Defendants are
4 entitled to such protection from contribution actions or claims
5 as is provided by CERCLA Section 113(f)(2), 42 U.S.C.
6 § 9613(f)(2).

7 98. The Settling Defendants agree that with respect to
8 any suit or claim for contribution brought by them for matters
9 related to the Site or this Consent Decree they will notify the
10 United States and the State, in writing, no later than sixty (60)
11 days prior to the initiation of such suit or claim.

12 99. The Settling Defendants also agree that with respect
13 to any suit or claim for contribution brought against them for
14 matters related to the Site or this Consent Decree they will
15 notify, in writing, the United States and the State within ten
16 (10) days of service of the complaint on them. In addition,
17 Settling Defendants shall notify the United States and the State
18 within ten (10) days of service or receipt of any Motion for
19 Summary Judgment and within ten (10) days of receipt of any order
20 from a court setting a case for trial.

21 100. In any subsequent administrative or judicial
22 proceeding initiated by the United States or the State for
23 injunctive relief, recovery of response costs, or other
24 appropriate relief relating to the Site, Settling Defendants
25 shall not assert, and may not maintain, any defense or claim
26

based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs).

XXV. ACCESS TO INFORMATION

101. Except as provided by Paragraph 102(b), Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the Work or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, relating to the Work or implementation of the Consent Decree their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

1 102. a. Settling Defendants may assert business

2 confidentiality claims covering part or all of the documents or
3 information submitted to Plaintiffs under this Consent Decree to
4 the extent permitted by and in accordance with Section 104(e) (7)
5 of CERCLA, 42 U.S.C. § 9604(e) (7), and 40 C.F.R. § 2.203(b) .

6 Documents or information determined to be confidential by EPA
7 will be afforded the protection specified in 40 C.F.R. Part 2,
8 Subpart B. If no claim of confidentiality accompanies documents
9 or information when they are submitted to EPA and the State, or
10 if EPA has notified Settling Defendants that the documents or
11 information are not confidential under the standards of Section
12 104(e) (7) of CERCLA, 42 U.S.C. § 9607(e) (7) the public may be
13 given access to such documents or information without further
14 notice to Settling Defendants.

15 b. The Settling Defendants may assert that certain
16 documents, records and other information are privileged under the
17 attorney-client privilege or any other privilege recognized by
18 federal law. If the Settling Defendants assert such a privilege
19 in lieu of providing documents, they shall provide the Plaintiffs
20 with the following: (1) the title of the document, record, or
21 information; (2) the date of the document, record, or
22 information; (3) the name and title of the author of the
23 document, record, or information; (4) the name and title of each
24 addressee and recipient; (5) a description of the contents of the
25 document, record, or information: and (6) the privilege asserted
26

1 by Settling Defendants. The Plaintiffs retain the right to
2 challenge any such claim of privilege. No documents, reports, or
3 other information created or generated pursuant to the
4 requirements of the Consent Decree shall be withheld on the
5 grounds that they are privileged.

6 103. No claim of confidentiality shall be made with
7 respect to any data, including, but not limited to, all sampling,
8 analytical, monitoring, hydrogeologic, scientific, chemical, or
9 engineering data, or any data or factual information evidencing
10 conditions related to the Work or implementation of the Consent
11 Decree contained in otherwise privileged documents.

12
13 XXVI. RETENTION OF RECORDS

14 104. Unless otherwise approved by EPA, until ten (10)
15 years after the Settling Defendants' receipt of EPA's
16 notification pursuant to Paragraph 52(b) of Section XV
17 (Certification of Completion of the Remedial Action), each
18 Settling Defendant shall preserve and retain all records and
19 documents now in its possession or control or which come into its
20 possession or control that relate in any manner to the
21 performance of the Work or that relate to the liability of any
22 person for response actions conducted and to be conducted at the
23 Site, regardless of any corporate retention policy to the
24 contrary. Until ten (10) years after the Settling Defendants'
25 receipt of EPA's notification pursuant to Paragraph 52(b) of
26

1 Section XV (Certification of Completion), Settling Defendants
2 shall also instruct their contractors and agents to preserve all
3 documents, records, and information of whatever kind, nature or
4 description relating to the performance of the Work.

5 105. At the conclusion of this document retention period,
6 Settling Defendants shall notify the United States and the State
7 at least ninety (90) days prior to the destruction of any such
8 records or documents, and, upon request by the United States or
9 the State, Settling Defendants shall deliver any such records or
10 documents to EPA or the State. The Settling Defendants may
11 assert that certain documents, records and other information are
12 privileged under the attorney-client privilege or any other
13 privilege recognized by federal law. If the Settling Defendants
14 assert such a privilege, they shall provide the Plaintiffs with
15 the following: (1) the title of the document, record, or
16 information; (2) the date of the document, record, or
17 information; (3) the name and title of the author of the
18 document, record, or information; (4) the name and title of each
19 addressee and recipient; (5) a description of the subject of the
20 document, record, or information; and (6) the privilege asserted
21 by Settling Defendants. The Plaintiffs retain the right to
22 challenge any such claim of privilege. No documents, reports, or
23 other information created or generated pursuant to the
24 requirements of the Consent Decree shall be withheld on the
25 grounds that they are privileged.

1 106. Each Settling Defendant hereby certifies,
2 individually, that it has not altered, mutilated, discarded,
3 destroyed or otherwise disposed of any records, documents, or
4 other information relating to its potential liability regarding
5 the Site since notification of potential liability by the United
6 States or the State or the filing of suit against it regarding
7 the Site and that it has fully complied with any and all EPA
8 requests for information pursuant to Section 104(e) and 122(e) of
9 CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).
0

1 XXVII. NOTICES AND SUBMISSIONS

2 107. Whenever, under the terms of this Consent Decree,
3 written notice is required to be given or a report or other
4 document is required to be sent by one party to another, it shall
5 be directed to the individuals at the addresses specified below,
6 unless those individuals or their successors give notice of a
7 change to the other parties in writing. All notices and
8 submissions shall be considered effective upon receipt, unless
9 otherwise provided. Written notice as specified herein shall
0 constitute complete satisfaction of any written notice
1 requirement of the Consent Decree with respect to the United
2 States, EPA, the State, and the Settling Defendants,
3 respectively.
4
5
6

1 As to the United States:

2 Chief, Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Ben Franklin Station
7 Washington, D.C. 20044
8 Re: DJ #90-11-3-128I

6 and

7 Director, Waste Management Division
8 United States Environmental Protection Agency
9 Region 10
10 1200 Sixth Avenue, HW-113
11 Seattle, Washington 98101

10 As to EPA:

11 Director, Waste Management Division
12 United States Environmental Protection Agency
13 Region 10
14 1200 Sixth Avenue, HW-113
15 Seattle, Washington 98101

16 Regional Counsel
17 EPA Office of Regional Counsel
18 United States Environmental Protection Agency
19 Region 10
20 1200 Sixth Avenue, HW-113
21 Seattle, Washington 98101

22 Nick Ceto
23 EPA Project Coordinator
24 United States Environmental Protection Agency
25 Region 10
26 1200 Sixth Avenue, HW-113
27 Seattle, Washington 98101

22 As to the State:

23 Curt Fransen
24 Office of Attorney General
25 State of Idaho
26 1410 N. Hilton
27 2nd Floor
28 Boise, Idaho 83706

27 BUNKER HILL STAUFFER/UNION PACIFIC RAILROAD
28 CONSENT DECREE - Page 94

December 15, 1994

1 State Project Coordinator
2 Idaho Department of Health & Welfare
3 Division of Environmental Quality
4 1410 North Hilton
5 Boise, Idaho 83720-9000

6 As to the Settling Defendants:

7 Union Pacific
8 Nancy A. Roberts
9 Environmental Counsel
10 1416 Dodge Street, Room 830
11 Omaha, NE 68179-0830
12 (402) 271-4752
13 (402) 271-5610 (FAX)

14 Union Pacific
15 Robert D. Markworth
16 Manager, Environmental Site Remediation
17 1416 Dodge Street, Room 930
18 Omaha, NE 68179-0930
19 (402) 271-4054
20 (402) 271-4461 (FAX)

21 Rhone-Poulenc, Inc.
22 George S. Goodridge
23 Senior Environmental Attorney
24 Rhone-Poulenc, Inc.
25 CN 5266
26 Princeton, New Jersey 08543-5266
27 (908) 821-3533
28 (908) 821-2787

29 Stauffer Management Company
30 Brian A. Spiller
31 President
32 Stauffer Management Company
33 1800 Concord Pike
34 Wilmington, Delaware 19897
35 (302) 886-5501
36 (302) 886-2952 (FAX)

1 As to EPA Project Coordinator:

2 Nick Ceto
3 EPA Project Coordinator
4 United States Environmental Protection Agency
5 Region 10
6 1200 Sixth Avenue, HW-113
7 Seattle, Washington 98101
8 (206) 553-8659
9 (206) 553-0124 (FAX)

7 As to State Project Coordinator:

8 State Project Coordinator
9 Idaho Department of Health & Welfare
10 Division of Environmental Quality
11 1410 North Hilton
12 Boise, Idaho 83720-9000
13 (208) 334-5860
14 (208) 334-0576 (FAX)

12 As to Settling Defendants' Project Coordinators

13 Union Pacific Project Coordinator
14 Robert D. Markworth
15 Manager, Environmental Site Remediation
16 1416 Dodge Street, Room 930
17 Omaha, NE 68179-0930
18 (402) 271-4054
19 (402) 271-4461 (FAX)

17 Rhone-Poulenc, Inc. and Stauffer Management Company
18 Carol A. Dickerson
19 Project Coordinator
20 ZENECA Inc.
21 Environmental Services & Operations
22 1800 Concord Pike
23 Wilmington, Delaware 19897
24 Telephone: (302) 886-5123
25 Facsimile: (302) 886-5933

22 XXVIII. EFFECTIVE DATE

23 108. The effective date of this Consent Decree shall be
24 the date upon which this Consent Decree is entered by the Court,
25 except as otherwise provided herein.

1 XXIX. RETENTION OF JURISDICTION

2 109. This Court retains jurisdiction over both the
3 subject matter of this Consent Decree and the Settling Defendants
4 for the duration of the performance of the terms and provisions
5 of this Consent Decree for the purpose of enabling any of the
6 Parties to apply to the Court at any time for such further order,
7 direction, and relief as may be necessary or appropriate for the
8 construction or modification of this Consent Decree, or to
9 effectuate or enforce compliance with its terms, or to resolve
0 disputes in accordance with Section XX (Dispute Resolution)
1 hereof.

2 XXX. ATTACHMENTS

3 110. The following attachments are attached to and
4 incorporated into and made an enforceable part of this Consent
5 Decree; provided, however, it is understood and agreed that the
6 Stauffer Entities draft RDR and the Union Pacific draft RAWP are
7 draft documents and must be finalized in accordance with the
8 Consent Decree prior to becoming enforceable parts of this
9 Decree:

- 0 "Attachment A" is the RODs.
1 "Attachment B" is the map of the Bunker Hill Superfund Site.
2 "Attachment C" is the map for the NIPC Area and subareas.
3 "Attachment D" is the map for the Union Pacific Area.
4 "Attachment E" is the Stauffer Entities SOW.
5 "Attachment F" is the Union Pacific SOW.
6 "Attachment G" is the Stauffer Entities draft RDR.
7 "Attachment H" is the Union Pacific draft RAWP.
8 "Attachment I" is the MOA between EPA and the State.

1 XXXI. COMMUNITY RELATIONS

2 111. Settling Defendants shall cooperate with EPA and the
3 State in providing information regarding the Work to the public.
4 As requested by EPA or the State, Settling Defendants shall
5 participate in the preparation of such information for
6 dissemination to the public and in public meetings which may be
7 held or sponsored by EPA or the State to explain activities at or
8 relating to the Site.

9
10 XXXII. MODIFICATION

11 112. Schedules specified in the SOWs and other
12 deliverables for completion of the Work may be modified by
13 agreement of EPA, in consultation with the State, and the
14 Settling Defendants. All such modifications shall be made in
15 writing.

16 113. No material modifications shall be made to the SOWs
17 without written notification to and written approval of the
18 United States, the Settling Defendants and the Court. Prior to
19 providing its approval to any modification, the United States
20 will provide the State with a reasonable opportunity to review
21 and comment on the proposed modification. Modifications to the
22 SOWs that do not materially alter those documents may be made by
23 written agreement between EPA, after providing the State with a
24 reasonable opportunity to review and comment on the proposed
25 modification, and the Settling Defendants.

1 114. Nothing in this Decree shall be deemed to alter the
2 Court's power to enforce, supervise, or approve modifications to
3 this Consent Decree.
4

5 XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

6 115. This Consent Decree shall be lodged with the Court
7 for a period of not less than thirty (30) days for public notice
8 and comment in accordance with Section 122(d)(2) of CERCLA,
9 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States
0 and the State reserve the right to withdraw or withhold their
1 consent if the comments regarding the Consent Decree disclose
2 facts or considerations which indicate that the Consent Decree is
3 inappropriate, improper, or inadequate. Settling Defendants
4 consent to the entry of this Consent Decree in the form presented
5 without further notice.

6 116. If for any reason the Court should decline to
7 approve this Consent Decree in the form presented, this agreement
8 is voidable at the sole discretion of any Party and the terms of
9 the agreement may not be used as evidence in any litigation
0 between the Parties.

XXXIV. SIGNATORIES/SERVICE

1 117. Each undersigned representative of a Settling
2 Defendant to this Consent Decree and the Assistant Attorney
3 General for Environment and Natural Resources of the Department

1 of Justice and the State signatory certifies that he or she is
2 fully authorized to enter into the terms and conditions of this
3 Consent Decree and to execute and legally bind such party to this
4 document.

5 118. Each Settling Defendant hereby agrees not to oppose
6 entry of this Consent Decree by this Court or to challenge any
7 provision of this Consent Decree unless the United States has
8 notified the Settling Defendants, in writing, that it no longer
9 supports entry of the Consent Decree.

10 119. Each Settling Defendant shall identify, on the
11 attached signature page, the name, address and telephone number
12 of an agent who is authorized to accept service of process by
13 mail on behalf of that party with respect to all matters arising
14 under or relating to this Consent Decree. Settling Defendants
15 hereby agree to accept service in that manner and to waive the
16 formal service requirements set forth in Rule 4 of the Federal
17 Rules of Civil Procedure and any applicable local rules of this
18 Court, including, but not limited to, service of a summons.

19 SO ORDERED THIS _____ DAY OF _____, 19__.

20

21

United States District Judge

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25

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1 of Justice and the State signatory certifies that he or she is
2 fully authorized to enter into the terms and conditions of this
3 Consent Decree and to execute and legally bind such party to this
4 document.

5 118. Each Settling Defendant hereby agrees not to oppose
6 entry of this Consent Decree by this Court or to challenge any
7 provision of this Consent Decree unless the United States has
8 notified the Settling Defendants, in writing, that it no longer
9 supports entry of the Consent Decree.

10 119. Each Settling Defendant shall identify, on the
11 attached signature page, the name, address and telephone number
12 of an agent who is authorized to accept service of process by
13 mail on behalf of that party with respect to all matters arising
14 under or relating to this Consent Decree. Settling Defendants
15 hereby agree to accept service in that manner and to waive the
16 formal service requirements set forth in Rule 4 of the Federal
17 Rules of Civil Procedure and any applicable local rules of this
18 Court, including, but not limited to, service of a summons.

19 SO ORDERED THIS 12th DAY OF September, 1995.

20
21 
22 United States District Judge
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26

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc. and Union Pacific Railroad Company, relating to the
4 Bunker Hill Superfund Site.

5
6 FOR THE UNITED STATES OF AMERICA

7 Date: _____

8 Lois J. Schiffer
9 Assistant Attorney General
0 Environment and Natural Resources
1 Division
2 U.S. Department of Justice
3 Washington, D.C. 20530

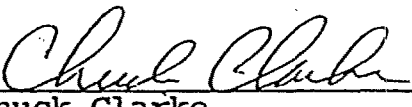
4 Peter Mounsey and Thomas Swegle
5 Environmental Enforcement Section
6 Environment and Natural Resources
7 Division
8 U.S. Department of Justice
9 Washington, D.C. 20530

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1 Assistant United States Attorney
2 District of Idaho
3 U.S. Department of Justice
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc. and Union Pacific Railroad Company, relating to the
4 Bunker Hill Superfund Site.

5
6
7 FOR THE UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY

9
10
11
12 Steven A. Herman
13 Assistant Administrator for
14 Enforcement and Compliance Assurance
15 U.S. Environmental Protection
16 Agency
17 401 M Street, S.W.
18 Washington, D.C. 20460

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24 Chuck Clarke
25 Regional Administrator, Region 10
26 U.S. Environmental Protection Agency
27 1200 Sixth Avenue
28 Seattle, Washington 98101

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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc. and Union Pacific Railroad Company, relating to the
4 Bunker Hill Superfund Site.

5 FOR THE STATE OF IDAHO

6 Date: 12/28/94



7 Governor
8 State of Idaho
9 State House
Boise, Idaho 83720



11 Curt A. Fransen
12 Deputy Attorney General
13 Office of Attorney General
14 State of Idaho
15 1410 N. Hilton
16 2nd Floor
17 Boise, Idaho 83706

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc. and Union Pacific Railroad Company relating to the
4 Bunker Hill Superfund Site.

6 FOR UNION PACIFIC RAILROAD

8 Date: 12/27/94

James V. Dolan
James V. Dolan
Vice-President-Law
1416 Dodge Street
Omaha, NE 68179

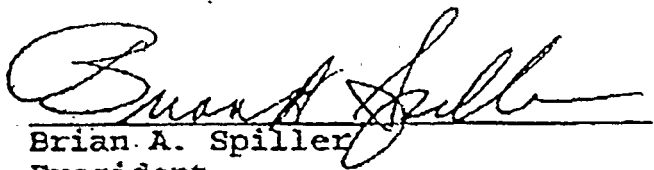
12 Agent Authorized to Accept Service on Behalf of Above-signed
13 Party:

14 James V. Dolan
15 Vice-President-Law
16 1416 Dodge Street
17 Omaha, NE 68179

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc. and Union Pacific Railroad Company, relating to the
4 Bunker Hill Superfund Site.
5

FOR STAUFFER MANAGEMENT COMPANY

6
7
8 Date: 12/23/94


9 Brian A. Spiller
0 President
1 Stauffer Management Company
2 1800 Concord Pike
3 Wilmington, Delaware 19897

4 Agent Authorized to Accept Service on Behalf of Above-signed
5 Party:

6 Brian A. Spiller
7 President
8 Stauffer Management Company
9 1800 Concord Pike
0 Wilmington, Delaware 19897

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Stauffer Management Company; Rhone-
3 Poulenc, Inc and Union Pacific Railroad, relating to the Bunker
4 Hill Superfund Site.
5

6 FOR RHONE-POULENC, INC
7

8 Date: _____

George S. Goodridge
George S. Goodridge
Senior Environmental Attorney
Rhone-Poulenc, Inc.
CN 5266
Princeton, New Jersey 08543-5266

12 Agent Authorized to Accept Service on Behalf of Above-signed
13 Party:

14 George S. Goodridge
15 Senior Environmental Attorney
16 Rhone-Poulenc, Inc.
17 CN 5266
18 Princeton, New Jersey 08543-5266
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